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THE
BILLS OF SALE ACTS,
1878 & 1882.

THE
BILLS OF SALE ACTS,
1878 & 1882.

WITH
AN INTRODUCTION AND EXPLANATORY NOTES
SHOWING THE CHANGES MADE IN THE LAW WITH
RESPECT TO BILLS OF SALE.

BY
EDWARD WILLIAM FITHIAN,
OF THE MIDDLE TEMPLE, ESQ., BARRISTER-AT-LAW.



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PREFACE.

THE principal object of this annotated edition of the Bills of Sale Acts is to indicate the nature and extent of the alterations made in the law by the recent statute. The notes appended to the Bills of Sale Act, 1878, have been given for the purpose of showing the interpretation which the Courts have placed upon the various sections of that Act. No attempt has been made to supply an exhaustive list of decided cases, the object being rather to select a few of a typical and representative character. Respecting the Act of 1882, the notes may be regarded as indicating the views and intentions of the promoters of the Act, and the nature of the evidence offered to Parliament, but how far these intentions have been realised can only be determined when the Act has had the advantage of being judicially considered. In the meantime it is hoped that these notes may be of some service to the profession and the public.

For convenience of reference the Bills of Sale Acts, 1854 to 1882, and the Interpleader Acts, have, with other documents, been reprinted in the Appendix.

E. W. F.

TEMPLE, *October*, 1882.



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THE
BILLS OF SALE ACTS,
1878 & 1882.

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INTRODUCTION.

THE passing of the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), may be said to have marked a fresh departure in legislation upon bills of sale. This Act repealed the two previous statutes upon the subject, the 17 & 18 Vict. c. 36, and the 29 & 30 Vict. c. 96, as from the first day of January, 1879; and although many of the provisions they contained were re-enacted, with slight verbal amendments, some very important alterations were made. Among these may be mentioned (1) the extension of the definition of a bill of sale, (2) the limitation of the period for registration to seven days, (3) the avoidance of certain duplicate bills of sale, (4), the attestation by a solicitor, and (5) the exemption from what is known as the order and disposition section of the Bankruptcy Act, 1869, of chattels comprised in a bill of sale which has been duly registered. The nature of these alterations will now be briefly noted, with the view of considering how far they may have rendered necessary further legislation on this subject.

(1.) By the interpretation section of the Bill of Sale Act, 1878 (a), the expression "bill of sale" is

<sup>1</sup> (a) 41 & 42 Vict. c. 31, s. 4.

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enlarged so as to include inventories of goods with receipts thereto attached, receipts for purchase-moneys of goods, and also any agreement, whether intended or not to be followed by the execution of any other instrument by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred. It is further provided (*b*) that every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale of any personal chattels which may be seized or taken under such power of distress. This section does not extend to a mortgage of any estate or interest in any land, tenement, or hereditament which a mortgagee in possession shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

(2.) Under the Bills of Sale Act, 1854 (*c*), the time allowed for registering a bill of sale was twenty-one days. This period was reduced by the Bills of Sale Act, 1878 (*d*), to seven days.

(3.) In order to avoid certain duplicate bills of sale it was enacted (*e*) that where a subsequent bill is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if

(*b*) 41 & 42 Vict. c. 31, s. 6.

(*c*) 17 & 18 Vict. c. 36, s. 1.

(*d*) 41 & 42 Vict. c. 31, s. 8.

(*e*) 41 & 42 Vict. c. 31, s. 9.

such subsequent bill is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognizance of the case that the subsequent bill of sale was *bond fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading the Act.

(4.) Section 10 (*f*) refers to the mode of registering bills. It prescribes that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the bill the effect thereof has been explained to the grantor by the attesting solicitor.

(5.) By section 20 (*g*) chattels comprised in a bill of sale which has been and continues to be duly registered under the Act shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act, 1869 (*h*).

The Bills of Sale Act, 1878, came into operation on the 1st January 1879, and an extraordinary increase in the number of registered bills of sale immediately followed. Returns have been prepared for several years before and subsequent to the Act coming into operation, and they show most conclusively that although before the passing of the Act there was a steady growth of these instruments, it was trifling when compared with the number of

(*f*) 41 & 42 Vict. c. 31, s. 10.

(*g*) 41 & 42 Vict. c. 31, s. 20.

(*h*) 32 & 33 Vict. c. 71, s. 15, sub-sec. 5.

**INTRODUCTION.** bills registered under the Act. The following figures have been extracted from the official returns presented to Parliament:—

| Year. | Number of Registered Bills of Sale. |
|-------|-------------------------------------|
| 1876  | 14,228                              |
| 1877  | 15,736                              |
| 1878  | 19,596                              |
| 1879  | 49,623                              |
| 1880  | 55,513                              |
| 1881  | 51,687                              |

This increase was not attributable to the state of trade generally, there being no sudden commercial depression which could in any way produce such a result. The reason generally alleged is that bills of sale became better securities under the Act than before, owing to the operation of section 20, which exempted chattels comprised in a bill of sale from the operation of the order and disposition section of the Bankruptcy Act, 1869. There can be no doubt that this had a material influence in increasing the number of these instruments, but its importance has been somewhat exaggerated. Prior to the Bills of Sale Act, 1878, the time allowed for registration was twenty-one days, the bills being valid in the meantime, and it was a common practice to evade registration by the execution of a new bill of sale over the same chattels at the expiration of every nineteen or twenty days. It was also held out to grantors that this method was a distinct advantage to them, as by avoiding registration they were screened from that publicity which would otherwise follow. Under such circumstances it is by no means difficult to understand why grantors, and especially traders, so readily complied with the suggestion made by



money-lenders, who were otherwise interested in preventing the fact from becoming known that they were the holders of bills of sale. Deeds of attornment also, which were rather extensively used in certain districts in lieu of bills of sale, were not registered before 1879. With the view of meeting this systematic evasion of the previous Bills of Sale Acts, a clause was inserted in the Act of 1878 (i) limiting the time for registering bills to seven days, as short a time as could reasonably be named, to afford an opportunity for sending bills executed in distant parts of the country to London for registration. It was also provided (k) that where a subsequent bill of sale is executed within seven days after the execution of a prior unregistered bill, and comprises all or any of the same chattels, and is given as security for the same debt, or part thereof, it shall to that extent be absolutely void, unless given for the purpose of correcting some material error in the prior bill. When these two sections came into operation, duplicate bills were no longer resorted to, and it is reasonable to conclude that the grantees of these instruments were thenceforth desirous, for their own protection, to get every bill of sale registered within seven days of execution. The evidence given before the Select Committee of the House of Commons in 1881 goes far to show that the increase in the number of bills of sale was not nearly so large as the figures taken alone would appear to indicate.

The advantages which the promoters of the Bills of Sale Act, 1878, anticipated would follow from the provision requiring the execution of every bill of sale to be attested by a solicitor of the Supreme

(i) 41 & 42 Vict. c. 31, s. 8.

(k) 41 & 42 Vict. c. 31, s. 9.

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Court have been dispelled by the way in which the Act has worked in practice. The attesting solicitors have in most instances been the solicitors of the grantees, and the protection which it was sought to give to illiterate grantors of an explanation by an independent solicitor has, therefore, proved of little avail. Whatever advantage this system of professional explanation and attestation may have possessed, it was almost entirely neutralised by the decision of the Court of Appeal in *Davis v. Goodman* (1), to the effect that as between grantor and grantee attestation by a solicitor was not essential to the validity of a bill of sale.

Finding that the abuses connected with bills of sale were apparently unchecked by the operation of the Bills of Sale Act, a bill was introduced into Parliament, in the second session of 1880, for the purpose of amending some of its provisions. No substantial progress, however, was made beyond calling public attention to the desirability of seriously considering what ought to be done in the way of further legislation. Early in the session of 1881 Mr. C. J. Monk, M.P., President of the Association of Chambers of Commerce of the United Kingdom, re-introduced the Bills of Sale Act (1878) Amendment Bill, but it was not read a second time until late in the session.

In the meantime the Lord Chancellor sent a circular letter to the judges and registrars of county courts in England and Wales asking, for the information of the Board of Trade, for accurate information as to the operation and effect of the Bills of Sale Act, 1878, and for suggestions for the amend-

(1) *Davis v. Goodman*, L. R. 5, C. P. D. 128.

ment of the same if, in the opinion of the persons to whom the circular letter was addressed, the law required amendment. The attention of the judges and registrars was not directed to any suggested amendments, or even to the Bill then before the House of Commons, and the answers received were consequently based upon the individual experience of each of the writers. To this communication from the Lord Chancellor replies were received from eighteen County Court judges and fifty registrars, and these replies were embodied in a Blue Book which was laid before both Houses of Parliament. There is, as might be expected, some diversity of opinion in the answers, but it is somewhat remarkable to find that many of the judges and registrars in large commercial districts made important recommendations which differed only in minor details.

Respecting the assignment of after-acquired property by bills of sale, five judges and twelve registrars made suggestions for amending the law, and the whole of these proposals were alike in principle, viz., that no after-acquired property ought to be allowed to pass under a bill of sale. The judges making these suggestions preside at the courts in Liverpool (2), Bradford, Birmingham, and Bristol, and in other courts in their respective districts; and the registrars who offer similar recommendations are attached to the courts at Liverpool (2), Leeds, Huddersfield, Derby, Dudley, Cardiff, Hanley, Bedford, Southampton, Crewe, and Worcester, thus comprising the officials of many of the most important business centres. Mr. Motteram, Q.C., the judge of the Birmingham County Court, says upon this subject:—"I hope I am not going beyond what your lordship wishes when I venture to submit that in any

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future legislation the grantor should be prohibited from assigning by any means whatever, what is termed after-acquired property. He ought not, in my opinion, to be allowed to assign anything that has not been paid for, and which at the date of the assignment is not in his possession. The property assigned ought to be clearly and distinctly defined by a schedule to the assignment, and the deed ought not to operate upon anything not included in the schedule. This should be done, not so much alone in the interest of the grantor as in the interest of the general body of the grantor's creditors, but especially it should be done in the interest of the creditors from whom the after-acquired property may have been obtained and not paid for. The law on this subject has reached dangerous lengths." Mr. W. T. S. Daniel, Q.C., the judge of the Bradford court, wrote in the following terms:—"The decisions of the courts have greatly increased the evils to creditors by recognising the validity of bills of sale which include after-acquired property, especially stock-in-trade, a misapplication, if I may presume to say so, of the principle of the case in the House of Lords of *Marshall v. Holroyd*. I should think the experience of every County Court judge would confirm these remarks. I think, however, the law might be amended so as to cure some of the evils, thus:—(1.) Confine bills of sale to property to which the grantor is entitled at the date (the old Common Law rule), and let the particulars of the property be described in the deed itself, or a schedule, part of the deed. (2.) Declare bills of sale void so far as they affect to deal in any way with after-acquired property, whether by licence to seize, power of distress, or any other device." Mr. T. P. E. Thompson and Mr. J. F.

Collier, the judges of the Liverpool court, with their registrars, sent a joint communication in which they expressed the following opinion :—“ Great injustice and fraud may be committed by bills of sale covering after-acquired property, but we doubt whether the mercantile community is prepared for so great a change of the law as the restriction of bills of sale to present property, which would practically abolish bills of sale of stock-in-trade. Probably greater publicity will meet the case, and prevent, in a great measure, the injustice and fraud complained of. We are prepared, if the mercantile community is, to advocate a change in the law to prevent a bill of sale being given of a trader's stock-in-trade and trade machinery at all.” It will be observed that this suggested amendment of the law was advocated in the interest of the general body of creditors, and that the only doubt or hesitation expressed by the above judges was in respect to the commercial community being prepared for so great a change. Upon this point it may be considered sufficient to remark that the bill then before Parliament, and which has since become law, contained provisions designed to effect this very object of preventing after-acquired property from passing under a bill of sale, and that it was promoted by an association comprising fifty-two chambers of commerce, and was supported by about the same number of trade protection societies. So far, therefore, as these organisations represent the views of the mercantile community, it may be said that there was a very decided expression of opinion in favour of the change.

Without referring to all the amendments suggested by the judges and registrars which coincided with

**INTRODUC-** clauses in the bill before Parliament, it may be suffi-  
**TION.** cient to note the following.

Recommendations similar to the clause contained in the bill requiring goods to be retained for several days after seizure before removal or sale, were made by Mr. Serjeant Petersdorff, judge of circuit 57, and by the registrars of the county courts at Dudley, Northallerton, and Stourbridge.

The desirability of requiring all bills of sale to be attested and registered, even as between grantor and grantee, was suggested by the judges of the Birmingham and Huddersfield courts, and by the registrars at Hanley, Bedford, Southampton, and Sheffield (2).

Respecting the proposal to make bills of sale void as against trustees in bankruptcy, suggestions were made by the County Court judges of circuits 25 and 35, and by no fewer than 13 registrars. They differed in details, as was inevitable with so many independent proposals, but they were in agreement with the spirit of the clause in the bill.

A great number of the registrars and some judges recommended the local registration of bills of sale in addition to the present registration in London. This was urged mainly on two grounds—firstly, to enable small traders to obtain information as to bills of sale given by grantors; and secondly, to assist bailiffs, so as to avoid needless executions.

Following closely upon the publication of the replies to the Lord Chancellor's circular, Mr. Monk succeeded in getting his bill read a second time in the House of Commons and referred to a select committee, composed principally of members of the legal profession. This committee met many times under the presidency of the Attorney-General, and took

evidence from a number of representative witnesses, including four money-lenders. The latter gave their evidence very frankly, and one or other of them in effect admitted that the average rate of interest upon advances of less than £50 was from 70 to 90 per cent. and frequently far exceeded the higher rate; that in about three-fourths of the cases in which bills were held by them, seizure and sale of the chattels took place; and that in ninety-nine cases out of one hundred the people who came to them for assistance were insolvent at the time. They made many statements of an equally startling description, and three of them agreed that it would be for the advantage of the smaller class of borrowers if they were prohibited from borrowing on bills of sale. The Lord Advocate of Scotland, who was the last witness called before the select committee, gave evidence as to the absence of the system of bills of sale in that country, and stated that the only way in which an owner of personal property could give security over it was by delivering it into the possession of the lender. The evidence given before the committee was overwhelmingly in favour of the principles contained in the bill, and the committee, after amending some of the clauses and adding others, reported the bill to the House. It was then too late in the session to get the bill through its remaining stages, and it was accordingly withdrawn.

Mr. Monk re-introduced the bill, as amended by the select committee, at the commencement of the Parliamentary Session of 1882, and in due course it reached the House of Lords, where it was under the charge of Lord Coleridge. The bill was there read a second time without a division, and on the 19th June was referred to a select committee, consisting

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of the Lord Chancellor, Earl of Powis, Earl Cairns, Viscount Sherbrooke, Lord Clinton, Lord Sudeley, Lord Monck, Lord Coleridge, and Lord Bramwell. The only witnesses examined before this committee were Mr. Farrer, permanent secretary to the Board of Trade, and Mr. Hodgson, one of the Masters of the Supreme Court. Several important amendments were made by the House of Lords, including, *inter alia*, a modification of the clauses affecting after-acquired property, the adoption of a common form of bill of sale when given as security for the payment of money, the abolition of attestation by a solicitor, and the substitution of £30 for £50 as the minimum sum for which a bill of sale can be granted. The House of Commons agreed to these amendments, and the Bill received the royal assent on the 18th August.

The new Act will come into operation on the 1st November, 1882, and from that date the law respecting bills of sale given by way of security for the payment of money will be materially altered. Among the more important changes is one requiring every bill of sale to have a schedule containing an inventory of the personal chattels assigned, and which enacts that, subject to certain exceptions as to crops which were actually growing at the time when the bill of sale was executed, and as to fixtures, plant, and trade machinery brought upon any premises in substitution for the like things described in the schedule, a bill of sale shall have effect only in respect of the chattels described in the schedule and shall be void, except as against the grantor, in respect of any chattels not so described. There is a further provision that, subject to the same exceptions, a bill of sale shall be void, except



as against the grantor, in respect of any of the chattels described in the schedule of which the grantor was not the true owner at the time. The practical effect of these sections will be to prevent, as against third parties, after-acquired property from being assigned by these instruments.

Section 8 makes attestation and registration necessary in every case, so that the omission to register will now be fatal to the validity of a bill even as between the parties themselves. It is not however required that the attestation shall be by a solicitor of the Supreme Court, as one or more credible witness or witnesses, not being one of the parties to the bill, will suffice. With the view of rendering this professional assistance unnecessary for the protection of illiterate grantors, a short form of bill of sale is given in the schedule to the Act which must in all cases be used where the instrument is given as security for the payment of money by the grantor.

It is enacted by section 12 that every bill of sale made or given in consideration of any sum under £30 shall be void. This will greatly diminish the number of bills, as it is in evidence that a very large number of these documents are given for sums below that amount.

The power to seize and take possession of the goods included in a bill of sale upon default being made in the payment of money or otherwise is undoubtedly a matter of great importance, but hitherto it has not been the subject of statutory enactment. It is now provided that goods assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes :—

- (1.) If the grantor shall make default in pay-

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ment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security ;

- (2.) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes ;
- (3.) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises ;
- (4.) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes ;
- (5.) If execution shall have been levied against the goods of the grantor under any judgment at law.

The removal and sale of the goods seized by the grantee will not be effected with the same expedition as formerly. All personal chattels seized or of which possession is taken after the 1st November, 1882, under any bill of sale registered before or after that date, must remain on the premises where they were seized, and not be removed or sold until after the expiration of five clear days.

The grantor may, in the meantime, apply to the High Court, or to a judge thereof in chambers, and such Court or judge, if satisfied that, by payment of money or otherwise, the cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

Section 15 expressly repeals the 20th section of the Bills of Sale Act, 1878, which enacted that chattels comprised in a registered bill of sale should not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act, 1869. In the event therefore of the bankruptcy of a grantor who is a trader, the property in the goods assigned by the bill of sale which, at the commencement of the bankruptcy, were in his possession will vest in the trustee, and be dealt with in pursuance of the law for the time being in force with respect to bankruptcy.

The above constitute the principal alterations made by the Act; but there are some minor changes protecting rates and taxes from the operation of bills of sale; providing for local registration in County Courts in addition to the registration in London; and defining the right to search and inspect bills of sale at the principal registry in accordance with the established practice.

# BILLS OF SALE ACT, 1878.

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41 & 42 VICT. c. 31.

*An Act to consolidate and amend the Law for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels. [22d July, 1878.]*

**Act, 1878,** WHEREAS it is expedient to consolidate and  
**ss. 1—3.** amend the law relating to bills of sale of personal  
chattels:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

**Short title.** 1. This Act may be cited for all purposes as the Bills of Sale Act, 1878.

**Commence-  
ment.** 2. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

**Applica-  
tion of  
Act.** 3. This Act shall apply to every bill of sale executed on or after the first day of January one thousand eight hundred and seventy-nine (whether the same be absolute, or subject or not subject to any trust) whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

The only provisions of this Act which have a retrospective effect are those contained in sections 7 and 11. Act, 1878,  
ss. 3, 4.

The rule of construction given in section 7 is made applicable to all deeds or instruments which include fixtures or growing crops, executed before the 1st January, 1879, and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of process of any court, which shall take place or be issued after the commencement of the Act. See *section 7, and the notes thereon.*

By section 11 the registration of bills of sale executed before the 1st day of January, 1879, must be renewed under this Act every five years, or the registration will become void.

4. In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say,) Interpre-  
tation of  
terms.

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea,

Act, 1878,  
s. 4.

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bills of lading, India warrants, warehouse-keepers certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented :

This definition of a bill of sale consists of a re-enactment of that contained in the Bills of Sale Act, 1854 (17 & 18 Vict. c. 36, s. 7), with the following additions :—  
“Inventories of goods with receipt thereto attached, or receipts for purchase-moneys of goods,” and “also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon shall be conferred.”

Section 6 still further extends this definition by providing that certain documents by which a power of distress is given as a security for a debt or advance, shall be deemed to be bills of sale within the meaning of the Act. See *section 6 and notes thereon*.

A bill of sale may consist of several documents. In *Ex parte Odell, In re Walden*, 10 Ch. D. 76 ; 48 L. J. Bank. 1, it was held that an inventory of goods with receipt attached and an agreement entered into on the same day by which the purchaser let the goods to the vendor, together constituted a mortgage, and required to be registered as a bill of sale. An inventory of goods with receipt for purchase-money attached, the vendor remaining in apparent possession of the goods, is a bill of sale and requires registration : *Ex parte Cooper, In re Baum*, 10 Ch. D. 313 ; 48 L. J. Bank. 40 ; 39 L. T. 521. Where furniture is sold on the hire system, and it is a term of the agreement that the property in the furniture is not to pass until all the instalments have been paid, the agreement will not be construed as a bill of sale. In *Ex parte Crawcour, In re Robertson*, 9 Ch. D. 419 ; 47 L. J. Bank. 94 ; 39 L. T. 2 ; 26 W. R. 733, Brett, L. J., said :—“ The sole question is whether the property in the goods passed to Robertson [the hirer]. In my opinion the property did not pass by the agreement. To hold

that it did would be clearly contrary to the expressed intention of the parties. Nor do I think that the property passed by the delivery of the goods, which was made in accordance with the agreement. In my opinion the property could not pass until all the instalments had been paid, and that has not been done yet." See also *Crawcour v. Salter*, 18 Ch. D. 30; 45 L. T. 62; 30 W. R. 21. Where there has been a sale and delivery of goods, and the purchase-money is to be paid by instalments, an agreement entered into subsequently by which the purchaser agreed to hire the goods from the vendor required registration. *Ex parte Orme, In re Lloyd*, 38 L. T. 328.

An agreement by which a lien is given on bills of lading is not a bill of sale: *Ex parte Watson, In re Love*, 5 Ch. D. 35; 46 L. J. Bank. 97; 37 L. T. 75; 25 W. R. 489; neither is a building agreement, by which a license is granted to take possession of chattels, unless by way of security for a debt: *Ex parte Newitt, In re Garrud*, 16 Ch. D. 522; 44 L. T. 5; 29 W. R. 344.

An assignment for the benefit of creditors must be for the benefit of all the creditors, though the instrument need not expressly state that it is intended to include all: *General Furnishing Co. v. Venn*, 2 H. & C. 153; 32 L. J. Ex. 220; 8 L. T. N. S. 432; *Boldero v. London and Westminster Loan and Discount Co.*, 5 Ex. D. 47; 42 L. T. 56.

The term "marriage settlements" includes only ante-nuptial settlements, or settlements made in accordance with ante-nuptial articles: *Fowler v. Foster*, 28 L. J. Q. B. 210; 5 Jur. N. S. 99; *Ashton v. Blackshaw*, L. R. 9 Eq. 510; 39 L. J. Ch. 205; *Gugen v. Sampson*, 4 F. & F. 974.

A bill of sale of personal chattels situate in Scotland, though made by a domiciled Englishman in England, need not be registered: *Coote v. Jecks*, 13 L. R. Eq. 597; 41 L. J. Ch. 599.

An agreement to give a bill of sale need not be registered: *Ex parte Homan, In re Broadbent*, L. R. 12 Eq. 598, unless it is relied upon as an equitable assignment: *Ex parte Mackay, In re Jeavons*, L. R. 8 Ch. 643; 42 L. J. Bank. 68; 28 L. T. 828; 21 W. R. 664.

The expression "personal chattels" shall mean goods, furniture, and other articles capable of

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s. 4.

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complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale :

Goods, furniture, and other articles, capable of complete transfer by delivery, mean such as when sold are capable of present delivery and removal: *Brantom v. Griffiths*, 2 C. P. D. 212; 46 L. J. C. P. 408.

In the Act of 1854 (17 & 18 Vict. c. 36, s. 7) fixtures are comprised in the definition of personal chattels, but by this section fixtures and growing crops are only to be so regarded when separately assigned or charged. The construction to be placed upon the words "when separately assigned or charged," is given in section 7.

Trade machinery is, by section 5, to be included in the definition of personal chattels.

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises, occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person :



“Prescribed” means prescribed by rules made Act, 1878,  
ss. 4, 5.  
under the provisions of this Act.

The definition of “apparent possession” is taken from section 7 of the Bills of Sale Act, 1854, and has been the subject of numerous decisions. The view taken by the Courts may be gathered from the following cases:—

Where a *bonâ fide* grantee for value under a bill of sale of household furniture and effects, immediately sent a person into the house, who took and kept possession while the grantor continued to live in the house and use the furniture down to the date of his bankruptcy, it was held that the furniture and effects were in the possession or apparent possession of the bankrupt within the meaning of the Bills of Sale Act: *Ex parte Hooman, In re Vining*, L. R. 10 Eq. 63; 39 L. J. Bank. 4; 22 L. T. N. S. 179; 18 W. R. 450.

In *Gough v. Everard*, 32 L. J. Ex. 210; 2 H. & C. 1, where goods had been sold, part of which were allowed by the purchaser to remain upon a private wharf occupied by the vendor, the key of which was afterwards delivered to the purchaser, who sold some of the goods, it was held, *inter alia*, that the residue of the goods remaining upon the wharf were not within this clause. Bramwell, B., construed the words “notwithstanding that formal possession thereof may have been taken by or given to any other person,” to mean that the goods shall be deemed to be in the apparent possession of the vendor, so long as they are on premises occupied by him, if nothing more has been done than the mere taking of formal possession. See also *Davies v. Jones*, 7 L. T. N. S. 130; 10 W. R. 779; *Pickard v. Marriage*, 1 Ex. D. 364; 45 L. J. Ex. 594; 35 L. T. 343; *Robinson v. Briggs*, L. R. 6 Ex. 1; 40 L. J. Ex. 17; *Ex parte Lewis, In re Henderson*, L. R. 6 Ch. 626; *Ex parte Jay, In re Blenkhorn*, L. R. 9 Ch. 697; *Ancona v. Rogers*, 1 Ex. D. 285; *Seal v. Claridge*, 7 Q. B. D. 516; 50 L. J. Q. B. 316; 44 L. T. 501; 29 W. R. 598.

5. From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof

Applica-  
tion of act  
to trade  
machinery.

Act, 1878,  
s. 5. which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act.

For the purposes of this Act—

“Trade machinery” means the machinery used in or attached to any factory or workshop;

1st. Exclusive of the fixed motive-powers, such as the water-wheels and steam engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive-powers; and,

2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose; and,

3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

“Factory or workshop” means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say,

(a.) In or incidental to the making any article or part of an article; or

(b.) In or incidental to the altering, repairing, ornamenting, finishing, of any article; or

(c.) In or incidental to the adapting for sale any article.

Under this section trade machinery (other than the fixed motive-powers, the fixed power machinery, and the pipes for steam, gas, and water) is declared to come

within the definition of personal chattels, and as such is capable of assignment by means of a bill of sale. Act, 1878,  
ss. 5, 6.

Iron rollers which have not been fixed to the machine in a rolling mill, and a weighing machine placed in the earth, but not fixed to the adjoining brickwork, will pass under a bill of sale : *Ex parte Astbury, In re Richards*, L. R. 4 Ch. 630 ; 38 L. J. Bank. 9 ; 20 L. T. N. S. 997.

6. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress. Certain instruments giving powers of distress to be subject to this Act.

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

Before this Act was passed a practice had grown up in certain parts of the country of evading the Bills of Sale Acts, 1854 and 1866, by the use of deeds of attornment. These deeds did not come within the definition of bills of sale, and consequently did not require registration. They were used, instead of bills, as security for an advance of money, and they created a fictitious rent payable to the creditor in advance with a power of distress on default. The object of this section was to bring such instruments within the rule as to registration ; and, in consequence, they are now but little used.

It was held in *Ex parte Jackson, In re Bowes*, 14 Ch. D. 725 ; 43 L. T. 272, that though an attornment clause in a mortgage deed is a valid clause, if it constitutes a real relation of landlord and tenant between the mortgagee and the mortgagor, yet, if the rent fixed by the

Act, 1878,  
ss. 6, 7. clause be so excessive that the Court comes to the conclusion that it was not intended to create a real rent or a real tenancy, but that the clause was a mere device to enable the mortgagee, in the event of the bankruptcy of the mortgagor, to obtain an additional security upon chattels which would otherwise have been distributed among his creditors, the clause, and any distress levied under it, even though before the commencement of the bankruptcy, will be invalid as against the trustee in the bankruptcy of the mortgagor, as being a fraud upon the bankruptcy law. See also *Ex parte Williams, In re Thompson*, 7 Ch. D. 138; 47 L. J. Bank. 26; 37 L. T. 764; 26 W. R. 274.

Fixtures or  
growing  
crops not  
to be  
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assigned  
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land passes  
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strument.

7. No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this Act.

By section 4, fixtures and growing crops when separately assigned are to be deemed personal chattels, and an assignment of them should consequently be registered.

The present section provides that they shall not be considered separately assigned if by the same instrument the land or building to which the fixtures are attached, or on which the crops grow, is conveyed to the same person. This rule of construction is retrospective, and

applies to all deeds which include fixtures and growing crops, executed before the 1st January, 1879. Act, 1878,  
ss. 7, 8.

A mortgage of a quarry, containing a tramway, and also a steam crane cramped on to large stones and kept in position by two guys, was executed in 1878, after the passing of this Act, but before it came into operation. It was held that the tramway and crane were fixtures, and that the mortgage did not require registration either under the old or the new Act, in order to give the mortgagee the right to retain the tramway and crane as part of his security, as against a liquidation trustee: *Ex parte Moore and Robinson's Banking Co., In re Armytage*, 14 Ch. D. 379; 49 L. J. Bank. 60; 42 L. T. 443; 28 W. R. 924. In deciding this case, Bacon, V. C., reviewed the earlier judgments and gave the following interpretation of the present section: "No doubt the statute may be read as if it had said, whereas Lord Hatherley, when Vice-Chancellor Sir W. Page Wood, has decided in *Mather v. Fraser* (2 Kay & J. 536; 25 L. J. Ch. 361; 2 Jur. N. S. 900), that if an instrument which conveys an interest in land conveys also machinery fixed to the land, such instrument does not require registration; and whereas the Court of Exchequer Chamber, speaking by the mouth of Lord Blackburn, J., in *Holland v. Hodgson* (L. R. 7 C. P. 328; 41 L. J. C. P. 146; 26 L. T. 709; 20 W. R. 990), has referred to, and entirely adopted that decision, in so doing following a decision in the Court of Queen's Bench in *Longbottom v. Berry* (39 L. J. Q. B. 37; L. R. 5 Q. B. 123; 22 L. T. 385) to the same effect; and whereas other and contrary decisions have been arrived at by the Courts of Chancery; now to remove all doubts and difficulties, be it enacted; and so forth. And then the legislature proceeds by enactment to establish and confirm the principle which had been laid down by Vice-Chancellor Wood."

As to the way in which fixtures and growing crops are dealt with by the Act of 1882, see section 6 of that Act.

8. Every bill of sale to which this Act applies shall be duly attested and shall be registered under this Act, within seven days after the making or giving thereof, and shall set forth the consideration for which such bill of sale was given, otherwise such bill of sale, as against all trustees or assignees of

Avoidance of un-registered bill of sale in certain cases.

Act, 1878,  
s. 8. the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriff's officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any court authorizing the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be).

Under this section bills of sale which are not duly attested and registered, and which do not set forth the consideration for which they were given are void as against (1) trustees and assignees in bankruptcy or liquidation; (2) sheriffs' officers and others seizing chattels comprised therein; and (3) all persons on whose behalf process of execution shall have been issued.

An unattested and unregistered bill of sale is valid as between the grantor and grantee: *Davis v. Goodman*, 5 C. P. D. 128; 49 L. J. C. P. 344; 42 L. T. 288; 28 W. R. 559.

This section is repealed by section 15 of the Act of 1882. As that Act however applies only to bills of sale which may be given by way of security for the payment of money, the other documents mentioned in section 4 of this Act will still be subject to the conditions of this section.

Conditional bills of sale will, by section 8 of the amending Act, require to be attested and registered, and to set

forth the consideration for which they were given, otherwise they will be void. See notes to that section. Act, 1878,  
ss. 8—10.

9. Where a subsequent bill of sale is executed within or on the expiration of seven days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognizance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act. Avoidance  
of certain  
duplicate  
bills of  
sale.

The object in avoiding certain duplicate bills of sale was to meet the systematic evasion of the previous Acts. Bills of sale were required under the Act of 1854 to be registered within twenty-one days, but during that interval they were valid instruments. To prevent the publicity caused by registration, duplicate bills were executed from time to time, each within twenty-one days of its predecessor, and thus the very purpose of the Act of 1854 was defeated. This section has caused an enormous increase in the number of bills of sale registered.

In *Carrard v. Meek*, 50 L. J. Q. B. 187 ; 43 L. T. 760 ; 29 W. R. 244, it was held that this section applies to bills given either before or on the seventh day after the execution of a prior unregistered bill, but not to bills executed after that day. This was obviously the intention of Parliament, as chattels comprised in bills which are not registered by the expiration of the seventh day would not be protected against execution creditors or the other classes of persons referred to in section 8.

10. A bill of sale shall be attested and registered under this Act in the following manner : Mode of  
registering

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bills of  
sale.

- (1.) The execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor:

This sub-section is repealed by section 10 of the Act of 1882, but the repeal will only affect bills of sale given as security for the payment of money.

It has been held that the solicitor attesting a bill of sale need not be a practising solicitor: *Hill v. Kirkwood*, 42 L. T. 105; 28 W. R. 358. The attesting solicitor may act for both parties, but if acting only for the grantee, it will not invalidate the bill: *Penwarden v. Roberts*, 9 Q. B. D. 137. A grantee who is also a solicitor cannot be the attesting solicitor: *Seal v. Claridge*, 7 Q. B. D. 516; 50 L. J. Q. B. 316; 44 L. T. 501; 29 W. R. 598.

Though this sub-section requires a statement in the attestation clause that before the execution of a bill of sale its effect has been explained by the attesting solicitor, it does not require that any such explanation should have in fact been given: *Ex parte National Mercantile Bank, In re Haynes*, 15 Ch. D. 42; 49 L. J. Bank. 62; 43 L. T. 36; 28 W. R. 848.

A bill of sale is not void as between grantor and grantee, even though unattested and unregistered: *Davis v. Goodman*, 5 C. P. D. 128; 49 L. J. C. P. 344; 42 L. T. 288; 28 W. R. 559.

- (2.) Such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description



of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, shall be presented to and the said copy and affidavit shall be filed with the registrar within seven clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed :

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s. 10.

The mode of registering bills under this Act is set forth above. It consists in presenting to the registrar, within seven clear days of the execution of a bill of sale, the following documents :—

- (1.) The original bill of sale with every schedule or inventory annexed to it, or referred to therein ;
- (2.) A true copy of the bill and schedules, and of every attestation of its execution ; and
- (3.) An affidavit containing certain prescribed particulars.

The copy of the bill with its schedules and attestations, and of the affidavit, are to be filed with the registrar.

The affidavit must state the following particulars :—

- (a.) The time of such bill of sale being made or given ;
- (b.) Its due execution and attestation ;
- (c.) A description of the residence and occupation of the grantor ; and
- (d.) A description of the residence and occupation of every attesting witness.

In reference to these particulars the following decisions have been given :—

(a.) The time of a bill of sale being made or given is the date of its execution by the grantor, and not the time when it was attested or when the consideration money was paid : *Darvill v. Terry*, 30 L. J. Ex. 355 ; 6 H. & N. 807.

(b.) The affidavit must state that the deponent was present when the bill was duly attested by the attesting solicitor. In deciding *Ford v. Kettle*, 9 Q. B. D. 139 ; 46

Act, 1878, L. T. N. S. 666; 30 W. R. 741, Jessel, M. R., said: "It  
s. 10. is not sufficient that the attestation clause should state  
that the solicitor did attest the execution of the deed; the Act requires an affidavit of the attestation, and here there is no affidavit that the solicitor attested the execution of the deed, or that he was present when it was executed, or anything equivalent to this." See also *Sharpe v. Birch*, 8 Q. B. D. 111; 45 L. T. N. S. 760; 30 W. R. 428.

(c.) The residence of the grantor must be described with substantial accuracy, so that no question can arise as to its identification. A slight inaccuracy will not invalidate a bill of sale, but if the misdescription be such as to mislead those who have had dealings with the grantor or who may be otherwise interested in the matter, it will be fatal. Where the proprietor of a travelling circus gave a bill of sale upon his circus property, in which he was described as of 9, Ponton Terrace, Nine Elms, Surrey, but now carrying on business at Bar Street, Southampton, and lodging at 3, Weymouth Terrace, Southampton; and the affidavit stated that the grantor "T. B. at present resides at 3, Weymouth Terrace, and carries on business at Bar Street in the town of Southampton, and has a permanent residence at 3, Ponton Terrace, Nine Elms, in the County of Surrey," it was held that it was a sufficient and proper description, although he had not resided at Ponton Terrace for six years, but was the owner of the house, and lent it to his brother-in-law: *Cooper v. Ibberson*; *Cooper v. Warnlow*, 44 L. T. 309; 29 W. R. 566. In *Blount v. Harris*, 4 Q. B. D. 603; 48 L. J. Q. B. 159, the attesting solicitor described himself in the affidavit as of B. Street, in the City of London, and residing at G. House, Acton, in the City of London. This was held to be a sufficient description, though Acton ought to have been described as "in the County of Middlesex," and not in the City of London. See also *Ex parte McHattie, In re Wood*, 10 Ch. D. 398; 48 L. J. Bank. 26; 39 L. T. 373; 27 W. R. 327; *Ex parte National Mercantile Bank, In re Haynes*, 15 Ch. D. 42; 49 L. J. Bank. 62; 43 L. T. 36; 28 W. R. 848; *Banbury v. White*, 2 H. & C. 300; 32 L. J. Ex. 258; 8 L. T. N. S. 508; *Pickard v. Bretts*, 29 L. J. Ex. 18; 5 Jur. N. S. 1134; 5 H. & N. 9; *Jones v. Harris*, L. R. 7 Q. B. 157; 41 L. J. Q. B. 6; 25 L. T. 702; 20 W. R. 143.

The occupation of the grantor must also be accurately described in the affidavit, and this term has been interpreted as meaning the principal business of one's life, vocation, calling, trade, the business which a man follows to procure a living or obtain wealth: *Tuton v. Sanoner*, 3 H. & N. 280; 4 Jur. N. S. 365; 27 L. J. Ex. 293. If the grantor is engaged in business or holds any office, it is not sufficient to describe him as "esquire," or "gentleman." The description of a clerk in the Audit Office as "gentleman" was held to be insufficient: *Allen v. Thompson*, 1 H. & N. 15; 25 L. J. Ex. 249. An actor, who is lessee and manager of a theatre is not sufficiently described as "esquire:" *Ex parte Hooman, In re Vining*, L. R. 10 Eq. 63; 39 L. J. Bank. 4; 22 L. T. N. S. 179; 18 W. R. 450. A grantor who had previously carried on the business of a licensed victualler, but who removed into a private house about a month before giving the bill of sale, was described as "a widow about to remove to the E. U. S. Hotel." It was held that the description of widow was sufficient and not likely to mislead, and that the latter part of the description was unnecessary, as showing an intention only to take the hotel, which might not be carried into effect: *Ex parte Wolfe or Chapman, In re Davey*, 45 L. T. 268. An affidavit describing a grantor as "until lately a commercial traveller," when in fact he was one at the time of the execution of the bill of sale, was held to be insufficient: *Castle v. Downton*, 5 C. P. D. 56; 49 L. J. C. P. 6; 41 L. T. 528; 28 W. R. 257. See also *Beales v. Tennant*, 29 L. J. Q. B. 188; 1 L. T. N. S. 295; *Dryden v. Hope*, 3 L. T. N. S. 280; 9 W. R. 18; *Grant v. Shaw*, L. R. 7 Q. B. 700; 41 L. J. Q. B. 305; *Sutton v. Bath*, 3 H. & N. 382; 27 L. J. Ex. 388; *Morewood v. South Yorkshire Railway*, 3 H. & N. 798; 28 L. J. Ex. 114; *Larchin v. North-Western Deposit Bank*, L. R. 10 Ex. 64; 44 L. J. Ex. 71; 33 L. T. 124.

The name of a trading company giving a bill of sale is the only description necessary: *Shears v. Jacobs*, L. R. 1 C. P. 513; 35 L. J. C. P. 241; *Deffell v. White*, L. R. 2 C. P. 144; 36 L. J. C. P. 25.

(d.) The residences and occupations of the attesting witnesses must likewise be accurately described, and the above cases are equally applicable to them.

(3.) If the bill of sale is made or given subject

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to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part thereof, otherwise the registration shall be void.

The above is a re-enactment in substance of section 2 of the Bills of Sale Act, 1854. The object of this provision was to prevent creditors being defrauded by sham bills of sale, by which the whole interest of the grantor is apparently transferred, whereas in reality he retains some interest in the subject of the transfer. But provided the grantor retains no interest, it does not make any difference to a creditor whether the grantee under a bill holds the property for himself, or in trust for any one else: *Robinson v. Collingwood*, 34 L. J. C. P. 18; 17 C. B. N. S. 777; *Ex parte Odell, In re Walden*, 10 Ch. D. 76; 48 L. J. Bank. 1; 39 L. T. 333; 27 W. R. 274; *Ex parte Collins, In re Lees*, L. R. 10 Ch. 367; 44 L. J. Bank. 78; 32 L. T. 106; 23 W. R. 862; *Ex parte Popplewell, In re Storey*, W. N., 1882, p. 91; 26 Sol. Jour. 509.

In case two or more bills of sale are given, compromising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

The above provision as to the priority of bills applies in all cases in which registration is necessary: *Conelly v. Steer*, 7 Q. B. D. 520; 50 L. J. Q. B. 326; 45 L. T. 402; 29 W. R. 529. In *Lyons v. Tucker*, 7 Q. B. D. 523; 50 L. J. Q. B. 661; 45 L. T. 403, chattels were assigned to the defendant by an unregistered bill of sale. The grantor afterwards gave another bill of sale, comprising the same chattels to the plaintiff, by whom it was registered. The defendant subsequently took possession under his unregistered bill, and the plaintiff then

brought an action against him for conversion. The Court of Appeal gave judgment for the plaintiff on the ground that the registered bill had priority under this section. Act, 1878,  
ss. 10, 11.

A transfer or assignment of a registered bill of sale need not be registered.

The Bills of Sale Acts, 1854 and 1866, contained no enactment as to the transfer or assignment of a registered bill of sale.

Under the present Act the following case has been reported:—A duly registered bill of sale was given to secure £500, with interest, part of which was subsequently paid off. A deed was afterwards entered into between the grantor and grantee and the plaintiff, whereby the security was transferred and goods assigned to the latter on his paying off the amount remaining due on the bill and making a further advance to the grantor. The amount secured by this deed was £501 15s. 9d., with interest; and the rate of interest and times of payment differed from those in the bill of sale. It was held by the Queen's Bench Division that this deed was a transfer and not a new bill of sale, and need not be registered to be effectual, as to the whole amount secured by it, against an execution creditor. The Court of Appeal held that whether or not the deed was an effectual security, without registration, for the fresh advance, it was, as to the amount which remained due on the former bill of sale, a transfer and valid to that extent without registration under the Bills of Sale Act, 1878, so as to entitle the plaintiff to the goods: *Horne v. Hughes*, 6 Q. B. D. 676; 44 L. T. 678; 29 W. R. 576; affirming 50 L. J. Q. B. 403; 44 L. T. 421.

11. The registration of a bill of sale, whether executed before or after the commencement of this Act, must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void. Renewal  
of registra-  
tion.

The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date

Act, 1878. of the bill of sale and of the last registration thereof,  
ss. 11, 12. and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

Every such affidavit may be in the form set forth in the schedule (A.) to this Act annexed.

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

This section is mainly a re-enactment of sections 4 and 5 of the Bills of Sale Act, 1866 (29 & 30 Vict. c. 96), which provided expressly for the renewal of the registration of bills every five years. The affidavit of renewal given in Schedule A. is identical in terms with that attached to the Act of 1866.

The renewal of registration is equally necessary when the grantee, before the period for renewal, assigns his interest under the bill of sale to a third person; and the assignee, if the registration is not renewed, has no title against an execution creditor: *Karet v. Kosher Meat Supply Association*, 2 Q. B. D. 361; 46 L. J. Q. B. 548; 36 L. T. 694; 25 W. R. 691.

Under section 14 a judge of the High Court may in his discretion rectify either an omission to register an affidavit of renewal, or an omission or mis-statement in any name or description contained therein which may be due to accident or inadvertence, upon such terms as he may think fit.

Form of  
register.

12. The registrar shall keep a book (in this Act called "the register") for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in the second schedule (B.) to this Act annexed, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other par-

ticulars shown in the said schedule or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration. Act, 1878,  
ss. 12, 13.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

The duties imposed upon the registrar by this section are of a ministerial and not judicial character, and it is not therefore within his province to enquire into the sufficiency or otherwise of the affidavits presented to him for filing: *Needham to Johnson, Taylor to Bentley*, 8 B. & S. 190.

Additional duties are assigned to the registrar by section 11 of the Act of 1882.

13. The masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such other officers as may for the time being be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, shall be the registrar for the purposes of this Act, and any one of the said masters may perform all or any of the duties of the registrar. The registrar.  
36 & 37  
Vict. c. 66.  
38 & 39  
Vict. c. 77.

In pursuance of this section, Order LXA, rule 9 of the Rules of the Supreme Court under the Judicature Acts (No. 49 of the Rules of April, 1880) provides that—

“The Masters shall be the Registrar for the purposes

Act, 1878,  
ss. 13—15.

of the Bills of Sale Act, 1878, and any one of the Masters may perform all or any of the duties of the Registrar."

Rectifica-  
tion of  
register.

14. Any judge of the High Court of Justice on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct.

The discretionary power given to a judge of the High Court by this section is, it will be observed, only to be exercised on being satisfied that the omission to register a bill of sale or an affidavit of renewal within the specified time, or the omission or mis-statement of the name, residence, or occupation of any person was accidental or due to inadvertence.

Entry of  
satisfac-  
tion.

15. Subject to and in accordance with any rules to be made under and for the purposes of this Act, the registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged.

The practice as to entering satisfaction upon a registered bill of sale is as follows:—

A memorandum of satisfaction may be ordered to be written upon a registered copy of a bill of sale on a consent to the satisfaction, signed by the person entitled to the benefit of the bill of sale, and verified by affidavit, being produced to the registrar, and filed in the central office. Where this consent cannot be obtained, the registrar may, on application by summons, and on hearing the person entitled to the benefit of the bill of sale, or



on affidavit of service of the summons on that person, and in either case on proof to the satisfaction of the registrar that the debt (if any) for which the bill of sale was made has been satisfied or discharged, order a memorandum of satisfaction to be written upon a registered copy thereof. *Order LXA, r. 10, of the Rules of the Supreme Court under the Judicature Acts* (No. 50 of the Rules of April, 1880). Act, 1878,  
ss. 15, 16.

The form of summons to be used when consent cannot be obtained will be found in the Appendix.

16. Any person shall be entitled to have an office copy or extract of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice, and any copy of a registered bill of sale, and affidavit purporting to be an office copy thereof, shall in all courts and before all arbitrators or other persons, be admitted as *prima facie* evidence thereof, and of the fact and date of registration as shown thereon. Any person shall be entitled at all reasonable times to search the register and every registered bill of sale, upon payment of one shilling for every copy of a bill of sale inspected; such payment shall be made by a judicature stamp. Copies may  
be taken,  
&c.

Under this section the proof of the registration of bills of sale has been greatly facilitated. As to the law under the previous Acts,—it was held that a certificate under the seal of the Queen's Bench Division to the effect that an affidavit and copy of bill of sale were filed as required by 17 & 18 Vict. c. 36, s. 1, does not relieve the party relying upon such bill of sale from the necessity of producing the copy filed, so as to show that it is in the same terms as that proved to have been executed: *Emmott v. Marchant*, L. R. 3 Q. B. D. 555; 38 L. T. 508; *Halkett v. Emmott*, 47 L. J. Q. B. 436; 26 W. R. 632.

The latter part of this section providing that any person shall be entitled to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected has been repealed

Act, 1878, by section 16 of the Act of 1882, and re-enacted in another ss. 16—19. form. *See the notes to that section.*

**Affidavits.**

17. Every affidavit required by or for the purposes of this Act may be sworn before a master of any division of the High Court of Justice, or before any commissioner empowered to take affidavits in the Supreme Court of Judicature.

Whoever wilfully makes or uses any false affidavit for the purposes of this Act shall be deemed guilty of wilful and corrupt perjury.

The Rules of the Supreme Court in respect to affidavits will be found in the Appendix.

**Fees.**

18. There shall be paid and received in common law stamps the following fees, viz.:

|                                                                                                                  |     |
|------------------------------------------------------------------------------------------------------------------|-----|
| On filing a bill of sale . . . . .                                                                               | 2s. |
| On filing the affidavit of execution of a bill of sale . . . . .                                                 | 2s. |
| On the affidavit used for the purpose of re-registering a bill of sale (to include the fee for filing) . . . . . | 5s. |

The following additional fees have been prescribed by an order of the Supreme Court, dated August, 1880, and are charged when the search is made by an officer of the Bills of Sale Registry:—

**SEARCHES AND INSPECTIONS.**

|                                                                                                                                                          |       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| For an official certificate of the result of a search in one name in any register or index under the custody of the registrar of bills of sale . . . . . | s. d. |
| For every additional name, if included in the same certificate . . . . .                                                                                 | 5 0   |
| For a duplicate copy or certificate, if not more than three folios . . . . .                                                                             | 2 0   |
| For every additional folio . . . . .                                                                                                                     | 1 0   |
| For every additional folio . . . . .                                                                                                                     | 0 6   |
| For a continuation search if made within fourteen days of date of official certificate (the result to be endorsed on such certificate) . . . . .         | 1 0   |

**Collection of fees**

19. Section twenty-six of the Supreme Court of Judicature Act, 1875, and any enactments for the

time being in force amending or substituted for that section, shall apply to fees under this Act, and an order under that section may, if need be, be made in relation to such fees accordingly.

Act, 1878,  
s. 19.  
under 38 &  
39 Vict.  
c. 77, s. 26.

The following is the section of the Judicature Act, 1875, above referred to :—

26. The Lord Chancellor, with the advice and consent of the judges of the Supreme Court, or any three of them, and with the concurrence of the Treasury, may, either before or after the commencement of this Act, by order, fix the fees and percentages (including the percentage on the estates of lunatics) to be taken in the High Court of Justice, or in the Court of Appeal, or in any court created by any commission, or in any office which is connected with those courts, or in which any business connected with any of those courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those courts or the Supreme Court, or any judge of those courts, including the masters and other officers in lunacy, and may from time to time by order increase, reduce or abolish, all or any of such fees and percentages, and appoint new fees and percentages to be taken in the said courts or offices, or any of them, or by any such officer as aforesaid.

Fixing and  
collection  
of fees in  
the High  
Court and  
Court of  
Appeal.

Any order made in pursuance of this section shall be binding on all the courts, offices, and officers to which it refers in the same manner as if it had been enacted by Parliament.

All such fees and percentages shall (save as otherwise directed by the order) be paid into the receipt of Her Majesty's Exchequer, and be carried to the Consolidated Fund, and with respect thereto, the following rules shall be observed :—

- (1.) The fees and percentages shall, except so far as the order may otherwise direct, be taken by stamps, and if not taken by stamps, shall be taken, applied, accounted for, and paid over in such manner as may be directed by the order.
- (2.) Such stamps shall be impressed or adhesive, as the Treasury from time to time direct.
- (3.) The Treasury, with the concurrence of the Lord Chancellor, may from time to time make

Act, 1878,  
s. 19.

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such rules as may seem fit for publishing the amount of fees, and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for insuring the proper cancellation of stamps, and for keeping accounts of such stamps.

- (4.) Any document which ought to bear a stamp in pursuance of this Act, or any rule or order made thereunder, shall not be received, filed, used, or admitted in evidence unless and until it is properly stamped, within the time prescribed by the rules under this section regulating the use of stamps, but if any such document is, through mistake or inadvertence, received, filed, or used without being properly stamped, the Lord Chancellor or the Court may, if he or it shall think fit, order that the same be stamped as in such order may be directed.
- (5.) The Commissioners of Inland Revenue shall keep such separate accounts of all money received in respect of stamps under this Act, as the Treasury may from time to time direct, and subject to the deduction of any expenses incurred by those Commissioners in the execution of this section, the money so received shall, under the direction of the Treasury, be carried to and form part of the Consolidated Fund.
- (6.) Any person who forges or counterfeits any such stamp, or uses any such stamp, knowing the same to be forged or counterfeit, or to have been previously cancelled or used, shall be guilty of forgery, and be liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

An order under this section may abolish any existing fees or percentages which may be taken in the said courts or offices, or any of them, or by the said officers or any of them, but, subject to the provisions of any order made in pursuance of this section, the existing fees and percentages shall continue to be taken, applied, and accounted for in the existing manner.

**20.** Chattels comprised in a bill of sale which has been and continues to be duly registered under this Act shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act, 1869.

Act, 1878,  
ss. 20—23.  
Order and  
disposition.  
32 & 33  
Vict. c. 71.

The effect of this section was to make a registered bill of sale good as against a trustee in bankruptcy, in respect of chattels comprised therein which at the time of the bankruptcy of the grantor were in his possession, order, or disposition as reputed owner, by the consent and permission of the true owner. It had previously been held in *Badger v. Shaw*, 29 L. J. Q. B. 73; 2 El. & El. 472; that the registration of a bill of sale did not prevent goods remaining in the possession of the grantor at the time of his bankruptcy being claimed by the trustee. See also *Stansfield v. Cubitt*, 2 De G. & J. 222; 4 Jur. N. S. 395; 31 L. T. 3.

Owing to the repeal of this section by section 15 of the Act of 1882, the provisions of the Bankruptcy Act, 1869, with respect to chattels in the possession of a bankrupt, being the grantor of a bill of sale, will be revived after the 1st November, 1882. See notes to section 15 of the Act of 1882.

**21.** Rules for the purposes of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be made under and for the purposes of the Supreme Court of Judicature Acts, 1873 and 1875.

Rules.  
36 & 37  
Vict. c. 66,  
38 & 39  
Vict. c. 77.

The Rules of the Supreme Court made in April, 1880, contain several in respect to this Act. They will be found in the Appendix.

**22.** When the time for registering a bill of sale expires on a Sunday, or other day on which the registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open.

Time for  
registra-  
tion.

**23.** From and after the commencement of this Act, the Bills of Sale Act, 1854, and the Bills of

Repeal of  
Acts.

**Act, 1878,** Sale Act, 1866, shall be repealed: Provided that  
**ss. 23, 24.** (except as is herein expressly mentioned with respect  
 17 & 18 to construction and with respect to renewal of regis-  
 Vict. c. 36. tration) nothing in this Act shall affect any bill of  
 29 & 30 sale executed before the commencement of this Act,  
 Vict. c. 96. and as regards bills of sale so executed the Acts  
 hereby repealed shall continue in force.

Any renewal after the commencement of this Act of the registration of a bill of sale executed before the commencement of this Act, and registered under the Acts hereby repealed, shall be made under this Act in the same manner as the renewal of a registration made under this Act.

For convenience of reference, the Bills of Sale Acts, 1854 and 1866, are reprinted in the Appendix.

**Extent of Act.**

**24.** This Act shall not extend to Scotland or to Ireland.

There are no bills of sale in Scotland, and an owner of personal property can only give a security over it by transferring the possession to the lender.

In 1879 an Act was passed called the Bills of Sale (Ireland) Act, 1879 (42 & 43 Vict. c. 50), the provisions of which are almost identical in terms with those of this Act.

## Schedule A.

## SCHEDULES.

### Section 11.

### SCHEDULE A.

I [A.B.] of do swear that a bill of sale, bearing date the day of 18 [insert the date of the bill], and made between [insert the names and descriptions of the parties in the original bill of sale], and which said bill of sale [or, and a copy of which said bill of sale, as the case may be] was registered on the day of 18 [insert date of registration], is still a subsisting security.

Sworn, &c.



# BILLS OF SALE ACT, 1882.

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45 & 46 VICT. c. 43.

Act, 1882,  
ss. 1—3.

*An Act to amend the Bills of Sale Act, 1878.*  
[18th August, 1882.]

41 & 42  
Vict. c. 31.

WHEREAS it is expedient to amend the Bills of Sale Act, 1878:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Bills of Sale Act (1878) Amendment Act, 1882; and this Act and the Bills of Sale Act, 1878, may be cited together as the Bills of Sale Acts, 1878 and 1882.

Commence-  
ment of  
Act.

2. This Act shall come into operation on the first day of November one thousand eight hundred and eighty-two, which date is hereinafter referred to as the commencement of this Act.

Construc-  
tion of  
Act.

41 & 42  
Vict. c. 31.

3. The Bills of Sale Act, 1878, is hereinafter referred to as "the principal Act," and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; but unless the context otherwise requires shall not apply to any bill of sale duly registered before the commencement of this Act so long as the registration thereof is not avoided by non-renewal or otherwise.



The expression "bill of sale," and other expressions in this Act, have the same meaning as in the principal Act, except as to bills of sale or other documents mentioned in section four of the principal Act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned bills of sale and other documents this Act shall not apply. Act, 1882,  
ss. 3, 4.

It will be observed that, although this Act is to be construed as one with the Bills of Sale Act, 1878, certain important qualifications are added:—

- (1.) Unless the context otherwise requires, it is not to apply to any bill of sale duly registered before the 1st November, 1882, so long as the registration thereof is not avoided by non-renewal or otherwise.
- (2.) It is not to apply to bills of sale or other documents which may be given otherwise than by way of security for the payment of money.

Bills of sale registered under the Bills of Sale Act, 1878, will continue to be governed by that Act so long as the registration is not avoided. Should, however, the registration be avoided by non-renewal or otherwise, they would then come under the operation of the new Act; and as unregistered bills they would be void against all parties, including the grantor. Under the Act of 1878, an unregistered bill was valid as between grantor and grantee, but the present Act has altered the law in that respect.

By section 13, chattels comprised in a bill of sale registered *before* or after the 1st November, 1882, which are seized after that date, must not be removed or sold until after the expiration of five clear days from the day on which they were seized.

As the application of this Act is expressly restricted to bills of sale given as security for the payment of money, it leaves the other documents specified in the interpretation section (4) of the Act of 1878 precisely in the same category as if this Act had not passed.

4. Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory Bill of sale  
to have

Act, 1882, of the personal chattels comprised in the bill of  
 s. 4. sale; and such bill of sale, save as hereinafter men-  
 schedule of property attached thereto. tioned, shall have effect only in respect of the per-  
 sonal chattels specifically described in the said  
 schedule; and shall be void, except as against the  
 grantor, in respect of any personal chattels not so  
 specifically described.

It has hitherto been usual to annex to bills of sale a schedule or inventory of the chattels assigned, though in many cases general words only have been used, as *ex. gr.* stock-in-trade, furniture, fixtures, &c. It will now be necessary in every case to specifically describe in the schedule all the chattels to be conveyed, because (subject to certain exceptions as to fixtures and growing crops) the bill of sale will have effect only in respect of these, and, except as against the grantor, will be otherwise void.

A grantor may continue his trading operations under the implied authority to sell the goods in the ordinary way of business, which has been held to be incident to bills of sale in which the grantor is left in possession of the chattels assigned.

In the case of the *National Mercantile Bank v. Hampson*, 5 Q. B. D. 177; 49 L. J. Q. B. 480; 28 W. R. 424; the plaintiffs alleged that they were the holders of a registered bill of sale of the growing crops, goods, chattels and effects which then were or thereafter should be on the farm and premises of S., a farmer, and that the defendant had wrongfully deprived them of the use and possession of twelve quarters of wheat comprised in the bill of sale. The defence was that the plaintiffs had allowed S. to have the possession of the wheat, and to hold himself out as the owner. The defendant further pleaded that he had purchased the wheat in the ordinary course of business, and without notice of the bill of sale. It was held that the defence was good, for the bill of sale by implication conferred a license on the grantor to carry on his business and dispose of the goods so as to give a valid title to purchasers.

The sale of goods comprised in a bill of sale in any manner other than the ordinary course of business would amount to a wrongful conversion, and an action would lie at the instance of the grantee against both the grantor and the purchaser. See *Taylor v. McKeand*, 5 C. P. D.

358; 49 L. J. C. P. 563; 42 L. T. 833; 28 W. R. 628; Act, 1882, ss. 4, 5.  
and *Cochrane v. Rymill*, 40 L. T. 744; 27 W. R. 776.

5. Save as hereinafter mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale. Bill of sale not to affect after-acquired property.

By this section a bill of sale will be void as against third parties in respect to personal chattels which are specifically described in the schedule, unless the grantor was the true owner of such chattels at the time when he executed the bill of sale. This imposes a second condition to the validity of a bill.

The expression "true owner" is one that has long been in use in the various statutes relating to bankruptcy, and was defined by Sir J. Leach in *Ex parte Dale*, Buck, 366, as the person who has the legal right to the possession and the power of dealing with the property. Mortgagees and trustees of chattels have been deemed to be true owners within the meaning of the bankruptcy law. *Ryall v. Rolle*, 1 Atk. 165; *Fraser v. The Swansea Canal Company*, 1 Ad. & El. 354.

The object of this section is to prevent the assignment by bills of sale of after-acquired property. Most of the common forms in general use contain a clause providing that any chattels which may at any time thereafter during the subsistence of the security be brought upon the premises of the grantor, whether in substitution for or addition to the chattels described in the schedule, shall be subject to the powers, licenses, and covenants of the bill of sale. Many abuses have arisen in consequence of the power of seizure granted by provisions of this kind, and grantees have not unfrequently been repaid the principal sum advanced and interest out of property belonging not to the grantor but to third parties. The opinions of the County Court judges and registrars in favour of restricting a grantor from assigning goods which do not belong to him, and which may not even be in existence at the time, were abundantly confirmed by the evidence given before the Select Committee of the House of Commons in 1881.

Act, 1882.  
s 5.

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In view of the importance of this subject, it may be well to briefly note the development of the doctrine by which after-acquired property has hitherto passed under bills of sale. At common law a man cannot grant property of which he is neither actually nor potentially the owner; or as Lord Bacon expressed it: "the law doth not allow of grants, except there be a foundation of an interest in the grantor; for the law will not accept of grants of titles or things in action, which are imperfect interests, much less will it allow a man to grant or incumber that which is no interest at all, but merely future." This view was sustained by the common law judges in a number of old cases. In equity, however, a different rule prevailed, and it was held that future property might be assigned. The leading case upon the subject is that of *Holroyd v. Marshall*, 10 H. L. Ca. 191; 33 L. J. Ch. 193. In moving the judgment of the House of Lords in that case, Lord Westbury, C., said: "A contract for valuable consideration, by which it is agreed to make a present transfer of property, passes at once the beneficial interest, provided the contract is one of which a Court of Equity will decree specific performance. In the language of Lord Hardwicke, the vendor becomes a trustee for the vendee, subject of course to the contract being one to be specifically performed. And this is true, not only of contracts relating to real estate, but also of contracts relating to personal property, provided that the latter are such as a Court of Equity would direct to be specifically performed. . . . It is quite true that a deed which professes to convey property which is not in existence at the time is, as a conveyance, void at law, simply because there is nothing to convey. So, in equity, a contract which engages to transfer property which is not in existence cannot operate as an immediate alienation, merely because there is nothing to transfer. But if a vendor or mortgagor agrees to sell or mortgage property, real or personal, of which he is not possessed at the time, and he receives the consideration for the contract, and afterwards becomes possessed of property answering the description in the contract, there is no doubt that a Court of Equity would compel him to perform the contract, and that the contract would, in equity, transfer the beneficial interest to the mortgagee or purchaser immediately on the property being acquired. This, of course, assumes that the supposed contract is one of that

class of which a Court of Equity would decree the specific performance. If it be so, then, immediately on the acquisition of the property described, the vendor or mortgagor would hold it in trust for the purchaser or mortgagee, according to the terms of the contract. For if a contract be in other respects good and fit to be performed, and the consideration has been received, incapacity to perform it at the time of its execution will be no answer when the means of doing so are afterwards obtained." The rule laid down in this decision has been followed in all subsequent cases concerning after-acquired property. In a recent case, *Lazarus v. Andrade*, 5 C. P. D. 318; 49 L. J., C. P. 847; 43 L. T. 30; 29 W. R. 15; the grantor assigned all "the stock-in-trade, goods, chattels, and effects contained in the schedule to the deed, and also the stock-in-trade, goods, chattels, and effects which might at any time during the continuance of the security be brought into the aforesaid messuage or dwelling-house, warehouse, and premises, or be appropriated to the use thereof, either in addition to or in substitution for stock-in-trade, goods, chattels, and effects then being therein, or any of them." It was held by Lopes, J., that the assignment was sufficient to pass the property in stock-in-trade afterwards brought into the premises in addition to, or in substitution for, that previously there. See also *Chidell v. Galsworthy*, 6 C. B., N. S. 471; *Belding v. Read*, 3 H. & C. 955; 34 L. J., Ex. 212.

An assignment of chattels, with a power or license to seize after-acquired property, will not constitute an assignment of the latter; *Reeve v. Whitmore*, *Martin v. Whitmore*, 4 De G. J. & S. 1; 33 L. J. Ch. 63.

6. Nothing contained in the foregoing sections of this Act shall render a bill of sale void in respect of any of the following things; (that is to say), Exception as to certain things.

- (1.) Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed.
- (2.) Any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any

Act, 1882,  
ss. 6, 7.

land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

The exclusion of after-acquired property from the operation of a bill of sale is subject to the modifications above stated.

(1.) As to growing crops. Though at the time when a bill of sale is given, the grantor may not actually possess the crops assigned, yet as soon as the seed is in the ground there is a potential property in the crops which can be assigned.

(2.) Fixtures, plant, and trade machinery will pass under a bill of sale if brought upon the premises of the grantor in substitution for any of the like fixtures, plant, or trade machinery which has been specifically described in the schedule to a bill of sale. This is intended to meet the case of new machinery, plant, or fixtures being required to replace similar chattels.

Bill of sale  
with power  
to seize,  
except in  
certain  
events to  
be void (a).

**7. Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes :—**

- (1.) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security ;
- (2.) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes ;
- (3.) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises ;
- (4.) If the grantor shall not, without reason-

(a) This marginal note has been rendered somewhat inaccurate by amendments subsequently made in the section.

able excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes ; Act, 1882,  
s. 7.

- (5.) If execution shall have been levied against the goods of the grantor under any judgment at law ;

The purpose of this section is to limit the power of the grantee to seize the chattels assigned. In many bills of sale the grantee reserves the right to enter and seize at any time, whilst in others, where the power is not so wide, some twenty or more causes are specified (some of a very trifling description), default in the performance of any one of which will entitle the grantee to seize and sell the goods. Some of these forms of money-lending bills of sale were laid before the two select committees which considered this bill. Important evidence was also received by them as to the hardships inflicted on borrowers by the exercise of some of the arbitrary powers contained in these instruments. Persons who are in immediate need of an advance of money are not usually in a position to contest the terms contained in the deed they are called upon to execute, and Parliament has therefore prescribed the various causes which will justify the seizure of the grantor's goods. It will be observed that, under sub-section (1), the specified causes of seizure may be increased by the grantor's default in the performance of any covenant or agreement contained in the bill of sale, and necessary for maintaining the security. These words, inserted by the Select Committee of the House of Lords, will no doubt be a subject for judicial consideration soon after the Act comes into practical operation. The obvious intention of Parliament, however, is to restrict, as far as can reasonably be done, the grantee's power of seizure, and it is therefore by no means improbable that the words "necessary for maintaining the security" may be construed very strictly.

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, or to a judge thereof in chambers, and such court or judge, if satisfied that by payment of money or otherwise the said cause of

Act, 1882, seizure no longer exists, may restrain the grantee  
ss. 7, 8. from removing or selling the said chattels, or may  
 make such other order as may seem just.

The seizure by the grantee is not to be followed, as hitherto, by an immediate removal and sale of the goods, for by section 13 it is provided that the chattels seized are to remain upon the premises for five clear days. This delay will enable the grantor to take counsel with his friends, and if by the payment of money or otherwise he can remedy the default, he may then make an application to the Court or to a judge in chambers, and, upon satisfying the Court or judge that the cause of seizure no longer exists, the grantee may be restrained from removing or selling the chattels, or such other order may be made as may seem just. The power of relief vested in a judge by this section will probably remove many of the abuses which have hitherto appeared to be almost inseparable from bills of sale.

Bill of  
 sale to be  
 void unless  
 attested  
 and re-  
 gistered.

8. Every bill of sale shall be duly attested, and shall be registered under the principal Act within seven clear days after the execution thereof, or if it is executed in any place out of England then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof; and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein.

This is in substitution for section 8 of the Bills of Sale Act, 1878, which is expressly repealed by section 15 of this Act. The alteration which it makes in the law respecting bills of sale given as security for the payment of money is the avoidance of unattested and unregistered bills in all cases, whereas under the Act of 1878 they were valid as between the parties, and void only as against certain specified classes of persons. This section also provides for the registration of bills executed out of England.

The decided cases as to attestation and registration have been referred to in the notes to section 10 of the principal Act, and, subject to the fact that after the



1st November, 1882, it will no longer be necessary for Act, 1882,  
solicitors to explain and attest bills of sale, those cases s. 8.  
will apply to the present Act.

In addition to a bill of sale being attested and registered, the section now under consideration enacts that it shall truly set forth the consideration for which it was given, otherwise it will be void. The decisions given under the Act of 1878, in respect to setting forth the consideration, will be useful as authorities under the present section, the only difference in the language being the addition of the word "truly," which does not appear in the earlier Act. The decisions as to setting forth the consideration have not been altogether uniform, but the later ones have recognised the principle that if a part of the money stated in a bill of sale to be the consideration paid at the time of its execution, is by the direction of the borrower given at the time, paid in order to satisfy his then existing debts, the money so paid may be properly stated in the bill of sale as money paid to him.

Where the consideration for a bill of sale was stated to be "the sum of £182 3s. now paid by the grantee to the grantor," and where it was proved that the above sum was at the request, and with the assent of the grantor, paid as follows, £8 3s. 3d., and £103 17s. 5d., to discharge two executions against the grantor's goods, £25 0s. 9d. to a solicitor for money lent, and for costs due to him from the grantor, and the balance, £45 1s. 7d. in cash to the grantor, it was held that, in the absence of any suggestion of fraud, the consideration was sufficiently set out to satisfy the statute: *Hamlyn v. Betteley*, 5 C. P. D. 327; 49 L. J., C. P. 465; 42 L. T. 373; 28 W. R. 956. But where the consideration was said to be "the sum of £65 now paid," and it was proved that the money had in fact been paid by instalments at various times between April, 1877, and October, 1878, the bill of sale being given in January, 1879, it was held by Bacon, C. J., that, all the instalments having been previously advanced, the consideration was not truly stated: *Ex parte Berwick, In re Young*, 43 L. T. 576; 29 W. R. 292.

In *Ex parte Rolph, In re Spindler*, 19 Ch. D. 98; 51 L. J., Ch. 88; 45 L. T. 482; 30 W. R. 52, the consideration for a bill of sale executed on the 23rd March, 1881, was stated to be "£50 by the assignee, paid to the assignor at or before the execution thereof." The only payment made to the grantor was £21 10s., the grantee

Act, 1882,  
ss. 8, 9 retaining £3 10s. for the expenses of the bill of sale, and also £25, which he paid to the grantor's landlord on the 30th March for two quarters' rent ending March 25 and June 24, 1881. The grantor subsequently went into liquidation, and the trustee claimed the goods comprised in the bill of sale on the ground that the consideration had not been truly stated. The Court of Appeal declared the bill void, because the consideration was not stated in the deed as required by the Bills of Sale Act. The consideration was a payment of money by the lender to the borrower, and a covenant or agreement by him to pay a further sum at a future day to some one else, and that ought to have been stated in the bill of sale.

Where the consideration was stated to be "£40 now lent and paid by the mortgagee to the mortgagor," and the amount actually advanced was £38 10s., the balance being retained for expenses, it was held that the bill of sale was void, the consideration not being truly set forth in the deed: *Ex parte Firth, In re Cowburn*, 19 Ch. D. 419; 51 L. J., Ch. 473; 46 L. T. 120; 30 W. R. 529. In this case the Court of Appeal referred to and discussed the decisions in *Ex parte National Mercantile Bank, In re Haynes*, 15 Ch. D. 42; 49 L. J., Bank. 62; 43 L. T. 36; 28 W. R. 848; and *Ex parte Challinor, In re Rogers*, 16 Ch. D. 260; 44 L. T. 122; 29 W. R. 205.

In *Ex parte Charing Cross, &c., Bank, In re Parker*, 16 Ch. D. 35; 50 L. J., Ch. 157; 44 L. T. 113; 29 W. R. 204, it was held that an incorrect statement of the consideration in a bill of sale cannot be rectified by a reference to the receipt.

For other cases see *Ex parte Bolland, In re Roper*, W. N. 1882, p. 127; Law Times, pp. 249, 254, 5th August, 1882; *Hamilton v. Chaine*, 7 Q. B. D. 319; 50 L. J., Q. B. 456; 44 L. T. 764; 29 W. R. 676; *Ex parte Poplewell, In re Storey*, W. N. 1882, p. 91; 26 Sol. Jour., 509.

Form of  
bill of sale.

9. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed.

There are many forms of bills of sale, differing widely in their terms, but those in general use by money lenders contain powers and conditions of a more or less

oppressive character. The object of this section, inserted **Act, 1882,**  
by the Select Committee of the House of Lords, is to **s. 9.**  
bring into general use a short and simple form, free  
from the technicalities which generally abound in such  
instruments. When this Bill left the House of Commons it  
did not contain any provision for a statutory form of bill of  
sale, but evidence was given by one of the Masters of the  
Supreme Court before the House of Lords Committee in  
favour of the insertion of a form. The following form was  
then prepared for the Select Committee, and added to the  
Act upon the motion of the Lord Chancellor.

*Form of Bill of Sale.*

THIS INDENTURE made the            day of            between  
A.B. of            of the one part, and C.D. of            of  
the other part, witnesseth that in consideration of the sum of  
£            now paid to A.B. by C.D., the receipt of which the  
said A.B. hereby acknowledges [or whatever else the consideration  
may be], he the said A.B. doth hereby assign unto C.D., his  
executors, administrators, and assigns, all and singular the  
several chattels and things specifically described in the schedule  
hereto annexed by way of security for the payment of the sum  
of £           , and interest thereon at the rate of            per cent.  
per annum [or whatever else may be the rate]. And the said  
A.B. doth further agree and declare that he will duly pay to  
the said C.D. the principal sum aforesaid, together with the  
interest then due, by equal            payments of £            on  
the            day of            [or whatever else may be the stipu-  
lated times or time of payment]. And the said A.B. doth also  
agree with the said C.D. that he will [here insert terms as to  
insurance, payment of rent, or otherwise, which the parties may  
agree to for the maintenance or defeasance of the security].

Provided always, that the chattels hereby assigned shall not  
be liable to seizure or to be taken possession of by the said  
C.D. for any cause other than those specified in section seven  
of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said A.B. in the presence of me  
E.F. [add witness name, address, and description].

The principal features in this form are (1) the setting  
forth of the interest separately from the amount advanced,  
(2) the limitation of the clauses which may be inserted by  
the grantee to agreed terms for the maintenance or de-  
feasance of the security, and (3) the incorporation by  
reference of the causes specified in section 7 of the Act,

Act, 1882, which render the chattels liable to be seized by the ss. 9—11. grantee.

As bills of sale made or given as security for the payment of money will be void unless made in accordance with this form, the greatest possible care will require to be taken in the preparation of such documents after the 1st November, 1882.

Attestation.

10. The execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section ten of the principal Act as requires that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed.

Attestation by one or more credible witnesses is now to be substituted for attestation by a solicitor. As the Bill left the House of Commons it provided for attestation by a Commissioner of Oaths, but the proposal was rejected by the Select Committee of the House of Lords, and the above section inserted in lieu of it at the instance of the Lord Chancellor. The evidence given on behalf of the Board of Trade was against attestation by a solicitor or commissioner, on the ground that it answered no useful purpose, and that it covered up a bad transaction. The adoption by the Select Committee of a statutory form of bill of sale, capable of being easily understood, does much to remove the necessity for an explanation by a solicitor, and at the same time it diminishes the expense which must of course be eventually borne by the grantor.

Local registration of contents of bills of sale.

11. Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same or of the person against whom the process is issued to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said

32 & 33  
Vict. c. 71,  
s. 60.

London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars to each such registrar. Act, 1882,  
s. 11.

Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

The object of this section is to supplement the registration of bills of sale in London by a system of local registration in each county court outside the metropolis. The registrar of bills of sale is within three days after the registration of a bill of sale given by a grantor residing outside the London bankruptcy district to send to the registrar of the county court district in which the grantor resides, or in which the chattels described in such bill are situate, an abstract of the contents of the bill in a form to be prescribed. The abstract is to be filed, and any person may search, make extracts from, and obtain copies of the same upon payment of fees in the same manner as bills of sale can be inspected, &c., at the principal registry in London. A proposal of this kind was strongly urged by several county court judges and registrars, as well as by witnesses examined before the Select Committee of the House of Commons in 1881, with the view of enabling traders and others in the districts concerned to obtain information as to bills of sale given by local grantors, and also to assist bailiffs, so as to avoid needless executions.

The London bankruptcy district, which is excluded from the operation of this section, is thus defined in the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71, s. 60):—

“The London bankruptcy district shall, for the purposes of this Act, comprise the following places: that is

**Act, 1882,** to say, the city of London and the liberties thereof, and  
ss. 11—13. all such parts of the metropolis and other places as are  
 situated within the district of any county court described  
 as a metropolitan county court in the list contained in  
 the second schedule hereto."

## SCHEDULE II.

### *List of Metropolitan County Courts.*

The Bloomsbury County Court of Middlesex.  
 The Bow County Court of Middlesex.  
 The Brompton County Court of Middlesex.  
 The Clerkenwell County Court of Middlesex.  
 The Lambeth County Court of Surrey.  
 The Marylebone County Court of Middlesex.  
 The Shoreditch County Court of Middlesex.  
 The Southwark County Court of Surrey.  
 The Westminster County Court of Middlesex.  
 The Whitechapel County Court of Middlesex.

No rules have yet been prepared for the purpose of  
 carrying out this section of the Act.

Bill of sale  
 under £30  
 to be void.

**12.** Every bill of sale made or given in considera-  
 tion of any sum under thirty pounds shall be void.

This section, as it was passed by the House of Commons  
 and the Select Committee of the House of Lords, provided  
 that bills of sale given for a less consideration than £50  
 were to be void, but the amount was subsequently reduced  
 to £30. Before the Select Committee of the House of  
 Commons a member of a firm of money-lenders carrying  
 on a most extensive business, suggested that bills of sale  
 for less amounts than £15 should be abolished because of  
 the misery they inflict upon working people. He said  
 this, although his firm take an enormous number of small  
 bills of sale (about 2,000 bills a year for sums under £20).

As the section stands, the consideration for a bill of  
 sale must not be less than £30. For cases as to setting  
 forth the consideration, see the notes to section 8 of this  
 Act.

Chattels  
 not to be  
 removed or  
 sold.

**13.** All personal chattels seized or of which pos-  
 session is taken after the commencement of this  
 Act, under or by virtue of any bill of sale (whether  
 registered before or after the commencement of this

Act), shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of. Act, 1882,  
ss. 13—15.

It has not been unusual for chattels to be seized and removed from the grantor's premises within a few hours after default has been made in the payment of an instalment. This section is intended to meet such cases by requiring five clear days to elapse after seizure before the goods are removed or sold. This will give the grantor an opportunity of obtaining assistance from his friends, and of applying to the Court or to a judge in chambers in pursuance of the proviso to section 7. Should any rent be due by the grantor, his landlord may also take advantage of this delay.

It will be noticed that this section applies to chattels seized after the 1st November, 1882, whether the bill of sale was registered before or after the commencement of this Act.

The five days will be exclusive of the day of seizure and the day of removal or sale. *Robinson v. Waddington*, L. R. 13 Q. B. 753; 18 L. J., Q. B. 250.

14. A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates. Bill of sale  
not to protect  
chattels  
against  
poor and  
parochial  
rates.

Under this provision distraint may be made for taxes, and poor and other parochial rates, upon the chattels of the grantor of a bill of sale during the five days following the seizure by the grantee, and the bill of sale will afford no protection against such distress.

15. The eighth and the twentieth sections of the principal Act, and also all other enactments contained in the principal Act which are inconsistent with this Act are repealed, but this repeal shall not affect the validity of anything done or suffered under Repeal of  
Bills of  
Sale Act,  
1878.

**Act, 1882,** the principal Act before the commencement of this  
s. 16. Act.

The following are the repealed sections of the Bills of Sale Act, 1878, above alluded to:—

Avoidance  
of un-  
registered  
bill of sale  
in certain  
cases.

8. Every bill of sale to which this Act applies shall be duly attested and shall be registered under this Act, within seven days after the making or giving thereof, and shall set forth the consideration for which such bill of sale was given, otherwise such bill of sale, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs' officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any Court authorising the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every person on whose behalf such process shall have been issued, shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days, are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be).

Order and  
disposi-  
tion.

32 & 33

Vict. c. 71.

20. Chattels comprised in a bill of sale which has been and continues to be duly registered under this Act shall not be deemed to be in the possession, order, or disposition of the grantor of the bill of sale within the meaning of the Bankruptcy Act, 1869.

The repeal of the former section is consequential upon the adoption of section 8 of this Act, which avoids all unregistered bills executed after the 1st November, 1882, whilst the repealed section avoided unregistered bills only as against trustees and assignees in bankruptcy or liquidation, sheriffs' officers, and persons on whose behalf process has been issued against the goods of the grantor.



The repeal of section 20 of the Act of 1878 constitutes **Act, 1882,** one of the most important alterations made by the new **s. 15.** Act. It revives what is known as the order and disposition section of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71, s. 15, sub-s. 5), which provides that the property of a bankrupt divisible amongst his creditors shall include the following :—

All goods and chattels being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, being a trader, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner ; provided that things in action other than debts due to him in the course of his trade or business, shall not be deemed goods and chattels within the meaning of this clause.

The practical effect of this is that upon the bankruptcy of a grantor, who is a trader, any goods which at the commencement of the bankruptcy are in his possession as reputed owner, with the consent of the true owner, will vest in the trustee under the bankruptcy, notwithstanding the bill of sale. Under the term "traders" are included :—Alum makers, apothecaries, auctioneers, bankers, bleachers, brokers, brickmakers, builders, calenderers, carpenters, carriers, cattle or sheep salesmen, coach proprietors, cowkeepers, dyers, fullers, keepers of inns, taverns, hotels, or coffee-houses, limeburners, livery stable keepers, market gardeners, millers, packers, printers, sharebrokers, shipowners, shipwrights, stockbrokers, stockjobbers, victuallers, warehousemen, wharfingers, persons using the trade or profession of a scrivener, receiving other men's moneys or estates into their trust or custody, persons insuring ships or their freight or other matters against perils of the sea, persons using the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail, and persons who, either for themselves or as agents or factors for others, seek their living by buying and selling, or buying and letting for hire goods or commodities, or by the workmanship or the conversion of goods or commodities ; but a farmer,

**Act, 1882,** grazier, common labourer, or workman for hire shall not,  
**s. 15.** nor shall a member of any partnership, association, or company which cannot be adjudged bankrupt under this Act, be deemed as such a trader for the purposes of this Act.

The following cases decided before the Act of 1878 will serve to illustrate the doctrine of reputed ownership as revived by the Act of 1882:—

A bill of sale executed on the 9th January, 1872, was registered on the 30th January. In the meantime, i.e., on the 23rd January, the grantor filed a petition for liquidation, under which the trustee took possession on the 12th February. The bill of sale provided that the grantor should continue in possession of the property until default in payment upon demand of what should be due to the grantee. No demand was made until the 12th February, when the grantee authorised an agent to take possession, but no possession was taken. It was held that the trustee was entitled to the property as against the bill of sale holder. Goods comprised in a bill of sale, which entitles the holder to take possession upon default in payment after demand, remain, notwithstanding the registration of the bill of sale, in the reputed ownership of the grantor; *Ex parte Harding, in re Fairbrother*, L. R. 15 Eq. 223; 28 L. T., N. S., 241.

A draper in London signed a written agreement by which he sold his household furniture to a furniture dealer, and hired it back at a rent of 12s. 6d. per week. He remained in the use and occupation of the furniture under the agreement for more than four years, and then filed a petition for liquidation, under which a trustee was appointed. It was held that the furniture was in the order and disposition of the debtor as the reputed owner at the commencement of the liquidation, and that the trustee was entitled to it; *Ex parte Lovering, in re Jones* (No. 2), L. R. 9 Ch. 621.

For other cases upon this section of the Bankruptcy Act see *Stansfield v. Cubitt*, 2 De G. & J. 222; 4 Jur., N. S., 395; 31 L. T. 3; *Joy v. Campbell*, 1 Scho. & Lef. 336; *Simmons v. Edwards*, 16 M. & W. 838; *Lingard v. Messiter*, 1 B. & C. 308; *Reynolds v. Hall*, 4 H. & N. 519; *Ex parte Watkins, in re Couston*, L. R. 8 Ch. 520; 42 L. J. Bank. 50; 28 L. T. 793; 21 W. R. 530. In giving judgment in the last-mentioned case, Lord

Selborne, C., fully explained the principle of the law as to reputed ownership. Act, 1882,  
ss. 15, 16.

16. So much of the sixteenth section of the principal Act as enacts that any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected is hereby repealed, and from and after the commencement of this Act any person shall be entitled at all reasonable times to search the register, on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

Inspection  
of regis-  
tered bills  
of sale.

The history of this section can be given very briefly. The practice of extracting from registered bills of sale the names and addresses of grantors and grantees, and the amounts for which the bills are given, has existed for more than a quarter of a century, and the trade gazettes containing the above particulars have become of the utmost value to those engaged in commercial and trading pursuits. In April, 1880, a new rule was issued in the following terms:—

The registrar of bills of sale shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search.

A person shall not inspect nor take any extract

**Act, 1882,  
ss. 16—18.**

from any of these registers or indexes, or any document filed in connection therewith, until he has specified in writing to the officer in charge of the register or index the name against which he wishes to search, and has satisfied the officer as to the object of the search.

Whether it was so intended or not, this rule would most effectually have prevented any complete lists of registered bills of sale from being obtained. The Associated Chambers of Commerce and the London bankers memorialised the Lord Chancellor against the new rule, and urged that the proposed change would prove detrimental to trade and commerce, inasmuch as it would deprive the commercial community of ready means of ascertaining whether any of their actual or intending customers have given bills of sale. Under the new rule every applicant would have had to make a written application in each case, thereby entailing a very great loss of time and labour and no inconsiderable expense, and delay. They also stated that the voluntary agencies, by means of which the mercantile community have hitherto obtained prompt information so necessary in all transactions where credit has to be given, have been carried on with a due regard to the interests of the various parties concerned, and to the satisfaction of the public.

In the following month (May, 1880), the Lord Chancellor rescinded the second paragraph of the above rule.

It was to prevent the recurrence of any possible difficulties of this kind that the present section was prepared. It confers no new right beyond that of defining the practice which has been in operation for more than twenty-five years.

Debentures  
to which  
Act not to  
apply.

**17.** Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company.

Extent of  
Act.

**18.** This Act shall not extend to Scotland or Ireland.

## SCHEDULE.

Act, 1882.  
Schedule.

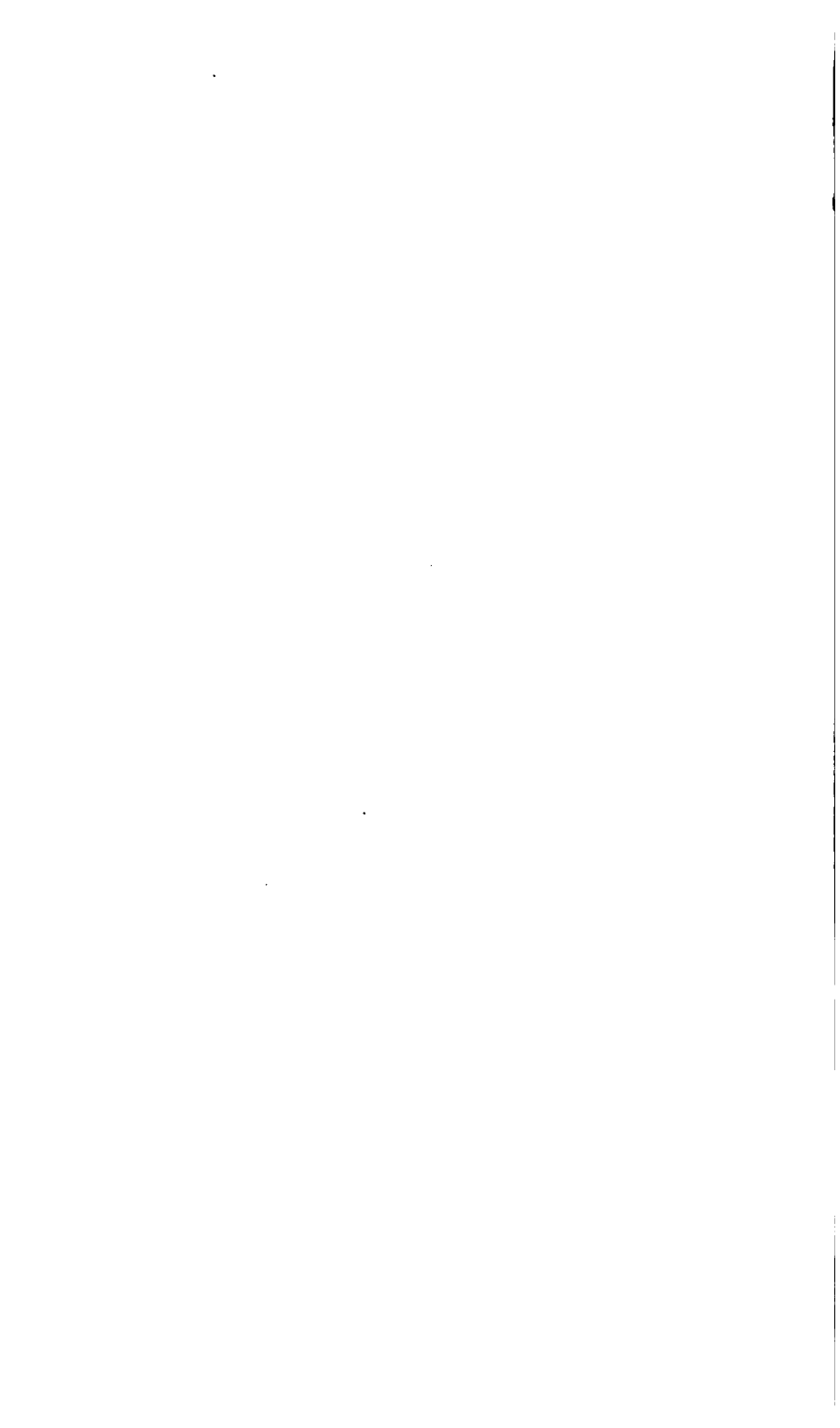
*Form of Bill of Sale.*

THIS INDENTURE made the            day of            , between  
A.B. of            of the one part, and C.D. of            of  
the other part, witnesseth that in consideration of the sum of  
£            now paid to A.B. by C.D., the receipt of which the  
said A.B. hereby acknowledges *[or whatever else the consideration  
may be]*, he the said A.B. doth hereby assign unto C.D., his  
executors, administrators, and assigns, all and singular the  
several chattels and things specifically described in the schedule  
hereto annexed by way of security for the payment of the sum  
of £            , and interest thereon at the rate of            per cent.  
per annum *[or whatever else may be the rate]*. And the said  
A.B. doth further agree and declare that he will duly pay to  
the said C.D. the principal sum aforesaid, together with the  
interest then due, by equal            payments of £            on  
the            day of            *[or whatever else may be the stipu-  
lated times or time of payment]*. And the said A.B. doth also  
agree with the said C.D. that he will *[here insert terms as to  
insurance, payment of rent, or otherwise, which the parties may  
agree to for the maintenance or defeasance of the security]*.

Provided always, that the chattels hereby assigned shall not  
be liable to seizure or to be taken possession of by the said  
C.D. for any cause other than those specified in section seven  
of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said A.B. in the presence of me  
E.F. *[add witness' name, address, and description]*.



## APPENDIX.

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### THE BILLS OF SALE ACT, 1854.

17 & 18 VICT. c. 36.

*An Act for preventing Frauds upon Creditors by Secret Bills of Sale of Personal Chattels.* **Act, 1854,**  
**s. 1.**

[10th July, 1854.]

WHEREAS frauds are frequently committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of their creditors: for remedy whereof, be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Every bill of sale of personal chattels made, after the passing of this Act, either absolutely or conditionally, or subject or not subject to any trusts, and whereby the grantee or holder shall have power, either with or without notice, and either immediately after the making of such bill of sale or at any future time, to seize or take possession of any property and effects comprised in or made subject to such bill of sale, and every schedule or inventory which shall be thereto annexed or therein referred to, or a true copy thereof, and of every attestation of the execution thereof, shall, together with an affidavit of the time of such bill of sale being made or given, and a description of the residence and occupation of the person making or giving the same, or, in case the same shall be made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process shall have issued, and of every attesting witness to such bill of sale, be filed with the officer acting as clerk of the docquets and judgments in the Court of Queen's Bench, within twenty-one days after the

*Bills of sale to be void, unless the same or a copy thereof be filed within twenty-one days, in like manner as warrants of attorney.*

**Act, 1854,** making or giving of such bill of sale (in like manner as a  
ss. 1—2. warrant of attorney in any personal action given by a trader is now by law required to be filed), otherwise such bill of sale shall, as against all assignees of the estate and effects of the person whose goods or any of them are comprised in such bill of sale under the laws relating to bankruptcy or insolvency, or under any assignment for the benefit of the creditors of such person, and as against all sheriffs' officers and other persons seizing any property or effects comprised in such bill of sale in the execution of any process of any court of law or equity authorising the seizure of the goods of the person by whom or of whose goods such bill of sale shall have been made, and against every person on whose behalf such process shall have been issued, be null and void to all intents and purposes whatsoever, so far as regards the property in or right to the possession of any personal chattels comprised in such bill of sale, which at or after the time of such bankruptcy, or of filing the insolvent's petition in such insolvency, or of the execution, by the debtor of such assignment for the benefit of his creditors, or of executing such process (as the case may be), and after the expiration of the said period of twenty-one days, shall be in the possession or apparent possession of the person making such bill of sale, or of any person against whom the process shall have issued under or in the execution of which such bill of sale shall have been made or given, as the case may be.

**Defeasance** 2. If such bill of sale shall be made or given subject to any  
or condi- defeasance or condition or declaration of trust not contained in  
tion of the body thereof, such defeasance or condition or declaration  
every bill of trust shall, for the purposes of this Act, be taken as part of  
of sale to such bill of sale, and shall be written on the same paper or  
be written parchment on which such bill of sale shall be written, before  
on the same the time when the same or a copy thereof respectively shall be  
paper or filed, otherwise such bill of sale shall be null and void to all  
parchment. intents and purposes, as against the same persons and as re-  
gards the same property and effects, as if such bill of sale or a  
copy thereof had not been filed according to the provisions of  
this Act.

**Officer of** 3. The said officer of the said Court of Queen's Bench shall  
court to cause every bill of sale, and every such schedule and inventory  
keep a book as aforesaid, and every such copy filed in his said office under  
containing the provisions of this Act, to be numbered, and shall keep a  
particulars book or books in his said office, in which he shall cause to be  
of each bill fairly entered an alphabetical list of every such bill of sale,  
of sale. containing therein the name, addition, and description of the  
person making or giving the same, or in case the same shall be  
made or given by any person under or in the execution of pro-  
cess as aforesaid, then the name, addition, and description of  
the person against whom such process shall have issued, and  
also of the person to whom or in whose favour the same shall



have been given, together with the number, and the dates of the execution and filing of the same, and the sum for which the same has been given, and the time or times (if any) when the same is thereby made payable, according to the form contained in the schedule to this Act, which said book or books, and every bill of sale or copy thereof filed in the said office, may be searched and viewed by all persons at all reasonable times, paying to the officer for every search against one person the sum of sixpence and no more; and that, in addition to the last-mentioned book, the said officer of the said Court of Queen's Bench shall keep another book or index, in which he shall cause to be fairly inserted, as and when such bills of sale are filed in manner aforesaid, the name, addition, and description of the person making or giving the same, or of the person against whom such process shall have issued, as the case may be, and also of the persons to whom or in whose favour the same shall have been given, but containing no further particulars thereof; which last-mentioned book or index all persons shall be permitted to search for themselves, paying to the officer for such last-mentioned search the sum of one shilling.

4. The said officer shall be entitled to receive, for his trouble in filing and entering every such bill of sale or a copy thereof as aforesaid, the sum of one shilling and no more; and such officer shall render a like account to the Commissioners of Her Majesty's Treasury, and the said commissioners shall have the like powers in every particular with respect to such account, and the amount of remuneration of such officer, and with respect to any surplus of the fees received by him, as is provided by the seventy-fifth chapter of the statute passed in the thirteenth and fourteenth years of the reign of Her present Majesty with respect to the officers of the Court of Common Pleas therein mentioned.

5. Any person shall be entitled to have an office copy or an extract of every bill of sale, or of the copy thereof filed as aforesaid, upon paying for the same at the like rate as for copies of judgments in the said Court of Queen's Bench.

6. It shall be lawful for any judge of the said Court of Queen's Bench to order a memorandum of satisfaction to be written upon any bill of sale or copy thereof respectively as aforesaid, if it shall appear to him that the debt (if any) which such bill of sale is given as security shall have been satisfied or discharged.

7. In construing this Act the following words and expressions shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such constructions; (that is to say),

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without

Act, 1854,  
ss. 3—7.

Officer entitled to a fee of 1s.  
for filing bill of sale, and to account for the same.

Office copies or extracts to be given on paying as for copies of judgments. Satisfaction may be entered.

Interpretation of terms.

**Act, 1854,**  
**ss. 7, 8.**

transfer, and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, but shall not include the following documents; that is to say, assignments for the benefit of the creditors of the person making or giving the same; marriage settlements; transfers or assignments of any ship or vessel or any share thereof; transfers of goods in the ordinary course of business of any trade or calling; bills of sale of goods in foreign parts or at sea; bills of lading; *India* warrants; warehouse keepers' certificates; warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented:

The expression "personal chattels" shall mean goods, furniture, fixtures, and other articles capable of complete transfer by delivery, and shall not include chattel interests in real estate, nor shares or interests in the stock, funds, or securities of any Government, or in the capital or property of any incorporated or joint stock company, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement, or of the custom of the country, ought not to be removed from any farm where the same shall be at the time of the making or giving of such bill of sale:

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving the bill of sale, so long as they shall remain or be in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or as they shall be used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person.

Extent of  
Act.

8. This Act shall not extend to *Scotland* or *Ireland*.

Schedule.

#### SCHEDULE.

| Name, &c., of the Person making or giving the Bill of Sale, or of the Person divested of Property. | Name, &c., of the Person to whom made or given. | Whether Bill of Sale, Assignment, Transfer, or what other Assurance, and whether absolute or conditional, and Number. | Date of Execution. | Date of Filing. | Sum for which made or given. | When and how payable. |
|----------------------------------------------------------------------------------------------------|-------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|--------------------|-----------------|------------------------------|-----------------------|
|                                                                                                    |                                                 |                                                                                                                       |                    |                 |                              |                       |

BILLS OF SALE ACT, 1866.

29 & 30 VICT. c. 96.

*An Act to amend the Bills of Sale Act, 1854.*

[10th August, 1866.]

**Act, 1866,**  
**ss. 1—5.**

WHEREAS an Act of Parliament was passed in the eighteenth year of the reign of her present Majesty, chapter thirty-six, intituled *An Act for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels*, and it is expedient that the said Act, hereinafter referred to as the "principal Act," should be amended :

17 & 18  
Vict. c. 36.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The principal Act and this Act shall, as far as is consistent with the tenor of such Acts, be construed together.

Construc-  
tion of Act.

2. The principal Act may be cited as "The Bills of Sale Act, 1854," and this Act may be cited as "The Bills of Sale Act, 1866."

Short  
titles.

3. The filing of a bill of sale, or a copy thereof, with the affidavit required by the principal Act, is hereinafter referred to as the registration of a bill of sale.

Definition  
of registra-  
tion of a  
bill of sale.

4. The registration of a bill of sale under the principal Act shall, during the subsistence of such security, be renewed in manner hereinafter mentioned once in every period of five years, commencing from the day of the registration, and, if not so renewed, such registration shall cease to be of any effect at the expiration of any period of five years during which a renewal has not been made as hereby required, subject to this provision, that where a period of five years from the original registration of any bill of sale under the principal Act has expired before the first day of *January* one thousand eight hundred and sixty-seven, such bill of sale shall be as valid to all intents and purposes as it would have been if this Act had not been passed, if such registration be renewed in manner aforesaid before the first day of *January* one thousand eight hundred and sixty-seven.

Renewal  
of registra-  
tion of bills  
of sale.

5. The registration of a bill of sale shall be renewed by some person filing in the office of the Masters of the Court of Queen's Bench (being the officers acting as clerk of the docquets and judgments in the said court) an affidavit stating the date of such bill of sale, and the names, residences, and

Mode of  
renewing  
bill of sale.  
7 Will. 4,

**Act, 1868,** occupations of the respective parties thereto as stated therein,  
**ss. 5—11.** and also the date of the registration of such bill of sale, and  
 and 1 Vict. that such bill of sale is still a subsisting security, and such  
 c. 30, ss. 1 Masters shall thereupon number such affidavit and renumber  
 & 3. the original bill of sale or copy filed in the said office with a  
 similar number.

**Affidavit to** 6. Every affidavit renewing the registration of a bill of sale  
**bear a 5s.** shall bear an adhesive common law stamp of the value of five  
**stamp.** shillings, and may be in the form given in Schedule A. to this  
 Act, and no further fee shall be payable on filing such affidavit.

**Masters of** 7. After the passing of this Act, instead of the books  
**Queen's** directed to be kept by the third section of the principal Act,  
**Bench to** there shall be kept at the said office one book only, in which  
**keep a** shall be fairly inserted, as and when such bills of sale or copies  
**book con-** as required by the principal Act, or affidavit of renewal as re-  
**taining** quired by this Act, are respectively filed, the name, residence,  
**particulars** and occupation of the person by whom the bill of sale was  
**of each bill** made or given, or in case the same was made or given by any  
**of sale and** person under or in the execution of process, then the name,  
**affidavit.** residence, and occupation of the person against whom such  
 process was issued, and also the name of the person or persons  
 to whom or in whose favour the said bill of sale was given,  
 together with the number affixed to the said bill of sale or copy  
 as directed by the principal Act or by this Act (as the case  
 may be); and the date of the said bill of sale or copy, and of  
 the registration thereof, and the date of the filing the said  
 affidavit of renewal, and all such particulars, shall be entered  
 according to the form given in Schedule B. to this Act; and  
 the said book, and every bill of sale or copy and affidavit filed  
 as aforesaid, may be searched and viewed by all persons at all  
 reasonable times upon payment for every search against one  
 person of the fee or sum of one shilling and no more, which fee  
 shall be paid by a common law stamp.

**Book, &c.**  
 may be  
 searched on  
 payment of  
 one  
 shilling.

**Office**  
**copies of**  
**affidavits**  
**to be sup-**  
**plied on**  
**payment**  
**for same.**  
**Affidavits**  
**may be**  
**sworn be-**  
**fore one of**  
**the Masters**  
**of the**  
**Queen's**  
**Bench.**

8. Any person shall be entitled to have an office copy of  
 such affidavit of renewal as is required to be filed under this  
 Act upon paying for the same at the like rate as for office  
 copies of bills of sale filed under the principal Act.

9. Any affidavit required by the principal Act or this Act  
 may be sworn before one of the Masters of the Court of Queen's  
 Bench.

**Applica-** 10. All enactments for the time being in force relating to  
**tion of** common law stamps shall apply to the stamps to be provided  
**enactments** for the purposes of this Act.  
**under this**

**Act.**  
**Extent of**  
**Act.**

11. This Act shall not extend to *Scotland* or *Ireland*.

Act, 1866.

## SCHEDULES.

## SCHEDULE A.

Schedule  
A.

I, [A.B.] of \_\_\_\_\_ do swear that a bill of sale, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 18 [insert the date of the bill of sale], and made between [insert the names, &c., of the parties to the bill of sale as in the original bill of sale], and which said bill of sale [or "and a copy of which said bill of sale" (as the case may be)] was filed in the Court of Queen's Bench on the \_\_\_\_\_ day of \_\_\_\_\_ 18 [insert the date of filing], is still a subsisting security.

Sworn, &amp;c.

## SCHEDULE B.

Schedule  
B.

| Satisfaction entered. | No. | By whom given, or against whom Process issued. |            |             | To whom given. | Instrument. | Date of Instrument. | Date of Registration. | Date of filing Affidavit of Renewal. |
|-----------------------|-----|------------------------------------------------|------------|-------------|----------------|-------------|---------------------|-----------------------|--------------------------------------|
|                       |     | Name.                                          | Residence. | Occupation. |                |             |                     |                       |                                      |
|                       |     |                                                |            |             |                |             |                     |                       |                                      |

## BILLS OF SALE ACT, 1878.

Act, 1878.

41 &amp; 42 VICT. c. 31.

*An Act to consolidate and amend the Law for preventing Frauds upon Creditors by secret Bills of Sale of Personal Chattels.*  
[22nd July, 1878.]

WHEREAS it is expedient to consolidate and amend the law relating to bills of sale of personal chattels :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

**Act, 1878.** 1. This Act may be cited for all purposes as the Bills of Sale  
**ss. 1—4.** Act, 1878.

**Short  
 title.**

2. This Act shall come into operation on the first day of January, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

**Commence-  
 ment.**

**Applica-  
 tion of Act.**

3. This Act shall apply to every bill of sale executed on or after the first day of January one thousand eight hundred and seventy-nine (whether the same be absolute, or subject or not subject to any trust) whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

**Interpreta-  
 tion of  
 terms.**

4. In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction ; (that is to say,)

The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for purchase-moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred, but shall not include the following documents ; that is to say, assignments for the benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse-keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented :

The expression "personal chattels" shall mean goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as hereinafter defined), when assigned together with a freehold or leasehold interest in any

land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale : Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land, or other premises occupied by him, or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person :

"Prescribed" means prescribed by rules made under the provisions of this Act.

5. From and after the commencement of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act.

Applica-  
tion of Act  
to trade  
machinery.

For the purposes of this Act—

"Trade machinery" means the machinery used in or attached to any factory or workshop ;

1st. Exclusive of the fixed motive-powers, such as the water-wheels and steam engines, and the steam-boilers, donkey engines, and other fixed appurtenances of the said motive powers ; and,

2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose ; and,

3rd. Exclusive of the pipes for steam, gas, and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

"Factory or workshop" means any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them ; that is to say,

(a.) In or incidental to the making any article or part of an article ; or

Act, 1878,  
ss. 5—8.

(b.) In or incidental to the altering, repairing, ornamenting, finishing, of any article ; or

(c.) In or incidental to the adapting for sale any article.

Certain  
instru-  
ments  
giving  
powers of  
distress to  
be subject  
to this Act.

6. Every attornment, instrument, or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale, within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress.

Provided, that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement, or hereditament which the mortgagee, being in possession, shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

Fixtures or  
growing  
crops not  
to be  
deemed  
separately  
assigned  
when the  
land passes  
by the  
same in-  
strument.

7. No fixtures or growing crops shall be deemed, under this Act, to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.

The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any bankruptcy, liquidation, assignment for the benefit of creditors, or execution of any process of any court, which shall take place or be issued after the commencement of this Act.

Avoidance  
of unregis-  
tered bill  
of sale in  
certain  
cases.

8. Every bill of sale to which this Act applies shall be duly attested and shall be registered under this Act, within seven days after the making or giving thereof, and shall set forth the consideration for which such bill of sale was given, otherwise such bill of sale, as against all trustees or assignees of the estate of the person whose chattels, or any of them, are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also as against all sheriffs' officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any court authorizing the seizure of the chattels of the person by whom or of whose chattels such bill has been made, and also as against every



person on whose behalf such process shall have been issued, **Act, 1878, ss. 8—10.** shall be deemed fraudulent and void so far as regards the property in or right to the possession of any chattels comprised in such bill of sale which, at or after the time of filing the petition for bankruptcy or liquidation, or of the execution of such assignment, or of executing such process (as the case may be), and after the expiration of such seven days are in the possession or apparent possession of the person making such bill of sale (or of any person against whom the process has issued under or in the execution of which such bill has been made or given, as the case may be).

9. Where a subsequent bill of sale is executed within or on Avoidance the expiration of seven days after the execution of a prior of certain unregistered bill of sale, and comprises all or any part of the duplicate personal chattels comprised in such prior bill of sale, then, if bills of sale. such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels or part thereof comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognizance of the case that the subsequent bill of sale was *bond fide* given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.

10. A bill of sale shall be attested and registered under this **Mode of Act in the following manner :** registering bills of sale.

- (1.) The execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting solicitor:
- (2.) Such bill, with every schedule or inventory thereto annexed or therein referred to, and also a true copy of such bill and of every such schedule or inventory, and of every attestation of the execution of such bill of sale, together with an affidavit of the time of such bill of sale being made or given, and of its due execution and attestation, and a description of the residence and occupation of the person making or giving the same (or in case the same is made or given by any person under or in the execution of any process, then a description of the residence and occupation of the person against whom such process issued), and of every attesting witness to such bill of sale, shall be presented to and the said copy and affidavit shall be filed with the registrar within seven clear days after the making or giving of such bill of sale, in like manner as a warrant of attorney in any

**Act, 1878,  
ss. 10—12.**

personal action given by a trader is now by law required to be filed:

- (3.) If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition, or declaration shall be deemed to be part of the bill, and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the copy filed under this Act therewith and as part hereof, otherwise the registration shall be void.

In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

A transfer or assignment of a registered bill of sale need not be registered.

**Renewal of  
registra-  
tion.**

11. The registration of a bill of sale, whether executed before or after the commencement of this Act, must be renewed once at least every five years, and if a period of five years elapses from the registration or renewed registration of a bill of sale without a renewal or further renewal (as the case may be), the registration shall become void.

The renewal of a registration shall be effected by filing with the registrar an affidavit stating the date of the bill of sale and of the last registration thereof, and the names, residences, and occupations of the parties thereto as stated therein, and that the bill of sale is still a subsisting security.

Every such affidavit may be in the form set forth in the Schedule (A.) to this Act annexed.

A renewal of registration shall not become necessary by reason only of a transfer or assignment of a bill of sale.

**Form of  
register.**

12. The registrar shall keep a book (in this Act called "the register") for the purposes of this Act, and shall, upon the filing of any bill of sale or copy under this Act, enter therein in the form set forth in the second schedule (B.) to this Act annexed, or in any other prescribed form, the name, residence, and occupation of the person by whom the bill was made or given (or in case the same was made or given by any person under or in the execution of process, then the name, residence, and occupation of the person against whom such process was issued, and also the name of the person or persons to whom or in whose favour the bill was given), and the other particulars shown in the said schedule or to be prescribed under this Act, and shall number all such bills registered in each year consecutively, according to the respective dates of their registration.

Upon the registration of any affidavit of renewal the like entry shall be made, with the addition of the date and number

of the last previous entry relating to the same bill, and the bill of sale or copy originally filed shall be thereupon marked with the number affixed to such affidavit of renewal. Act, 1878,  
ss. 12—16.

The registrar shall also keep an index of the names of the grantors of registered bills of sale with reference to entries in the register of the bills of sale given by each such grantor.

Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

13. The masters of the Supreme Court of Judicature attached to the Queen's Bench Division of the High Court of Justice, or such other officers as may for the time being be assigned for this purpose under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, shall be the registrar for the purposes of this Act, and any one of the said masters may perform all or any of the duties of the registrar. The registra-  
tr. 36 & 37  
Vict. c. 66.  
38 & 39  
Vict. c. 77.

14. Any judge of the High Court of Justice on being satisfied that the omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by this Act, or the omission or mis-statement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence, or occupation, or by extending the time for such registration on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter, as he thinks fit to direct. Rectifica-  
tion of  
register.

15. Subject to and in accordance with any rules to be made under and for the purposes of this Act, the registrar may order a memorandum of satisfaction to be written upon any registered copy of a bill of sale, upon the prescribed evidence being given that the debt (if any) for which such bill of sale was made or given has been satisfied or discharged. Entry of  
satisfac-  
tion.

16. Any person shall be entitled to have an office copy or extract of any registered bill of sale, and affidavit of execution filed therewith, or copy thereof, and of any affidavit filed therewith, if any, or registered affidavit of renewal, upon paying for the same at the like rate as for office copies of judgments of the High Court of Justice, and any copy of a registered bill of sale, and affidavit purporting to be an office copy thereof, shall in all courts and before all arbitrators or other persons, be admitted as *prima facie* evidence thereof, and of the fact and date of registration as shown thereon. Any person shall be entitled at all reasonable times to search the register and every registered bill of sale, upon payment of one shilling for every copy of a bill of sale inspected; such payment shall be made by a judicature stamp. Copies may  
be taken,  
&c.

**Act, 1878.** 17. Every affidavit required by or for the purposes of this  
**ss. 17—24.** Act may be sworn before a master of any division of the High  
**Affidavits.** Court of Justice, or before any commissioner empowered to  
 take affidavits in the Supreme Court of Judicature.

Whoever wilfully makes or uses any false affidavit for the  
 purposes of this Act shall be deemed guilty of wilful and cor-  
 rupt perjury.

**Fees.** 18. There shall be paid and received in common law stamps  
 the following fees, viz. :

On filing a bill of sale . . . . . 2s.  
 On filing the affidavit of execution of a bill of sale . 2s.  
 On the affidavit used for the purpose of re-registering  
 a bill of sale (to include the fee for filing) . . . 5s.

**Collection** 19. Section twenty-six of the Supreme Court of Judicature  
**of fees** Act, 1875, and any enactments for the time being in force  
**under 38 &** amending or substituted for that section, shall apply to fees  
**39 Vict.** under this Act, and an order under that section may, if need  
**c. 77, s. 26.** be, be made in relation to such fees accordingly.

**Order and** 20. Chattels comprised in a bill of sale which has been and  
**disposition.** continues to be duly registered under this Act shall not be  
 deemed to be in the possession, order, or disposition of the  
 grantor of the bill of sale within the meaning of the Bank-  
**32 & 33** ruptcy Act, 1869.  
**Vict. c. 71.**

**Rules.** 21. Rules for the purposes of this Act may be made and  
 altered from time to time by the like persons and in the like  
 manner in which rules and regulations may be made under  
**36 & 37** and for the purposes of the Supreme Court of Judicature Acts,  
**Vict. c. 66.** 1873 and 1875.  
**38 & 39**  
**Vict. c. 77.**

**Time for** 22. When the time for registering a bill of sale expires on a  
**registra-** Sunday, or other day on which the registrar's office is closed,  
**tion.** the registration shall be valid if made on the next following  
 day on which the office is open.

**Repeal of** 23. From and after the commencement of this Act, the Bills  
**acts,** of Sale Act, 1854, and the Bills of Sale Act, 1866, shall be  
 repealed : Provided that (except as is herein expressly men-  
**17 & 18** tioned with respect to construction and with respect to renewal  
**Vict. c. 36.** of registration) nothing in this Act shall affect any bill of sale  
**29 & 30** executed before the commencement of this Act, and as re-  
**Vict. c. 96.** gards bills of sale so executed the Acts hereby repealed shall  
 continue in force.

Any renewal after the commencement of this Act of the  
 registration of a bill of sale executed before the commence-  
 ment of this Act, and registered under the Acts hereby re-  
 pealed, shall be made under this Act in the same manner as  
 the renewal of a registration made under this Act.

**Extent of** 24. This Act shall not extend to Scotland or to Ireland.  
**Act.**

# BILLS OF SALE ACT, 1882.

81

Act, 1878.

Schedules.

## SCHEDULES.

### SCHEDULE A.

Schedule  
A.

I [A.B.] of do swear that a bill of sale, bearing date the day of 18 [insert the date of the bill], and made between [insert the names and descriptions of the parties in the original bill of sale], and which said bill of sale [or, and a copy of which said bill of sale, as the case may be] was registered on the day of 18 [insert date of registration], is still a subsisting security.  
Sworn, &c.

Section 11.

### SCHEDULE B.

Schedule  
B.

Section 12.

| Satisfaction entered. | No. | By whom given (or against whom process issued). |            |             | To whom given. | Nature of Instrument. | Date. | Date of Registration. | Date of registration of Affidavit of Renewal. |
|-----------------------|-----|-------------------------------------------------|------------|-------------|----------------|-----------------------|-------|-----------------------|-----------------------------------------------|
|                       |     | Name.                                           | Residence. | Occupation. |                |                       |       |                       |                                               |
|                       |     |                                                 |            |             |                |                       |       |                       |                                               |

## BILLS OF SALE ACT (1878), AMENDMENT ACT, 1882.

45 & 46 VICT. c. 43.

An Act to amend the Bills of Sale Act, 1878.

[18th August, 1882.]

Act, 1882.

WHEREAS it is expedient to amend the Bills of Sale Act, 1878 :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

**Act, 1882,** 1. This Act may be cited for all purposes as the Bills of  
**ss. 1—6.** Sale Act (1878) Amendment Act, 1882; and this Act and the  
 Bills of Sale Act, 1878, may be cited together as the Bills of  
**Short** Sale Acts, 1878 and 1882.  
**title.**

**Commence-** 2. This Act shall come into operation on the first day of  
**ment of** November one thousand eight hundred and eighty-two, which  
**act.** date is hereinafter referred to as the commencement of this  
 Act.

**Construc-** 3. The Bills of Sale Act, 1878, is hereinafter referred to as  
**tion of act.** "the principal Act," and this Act shall, so far as is consistent  
**41 & 42** with the tenor thereof, be construed as one with the principal  
**Vict. c. 31.** Act; but unless the context otherwise requires shall not apply  
 to any bill of sale duly registered before the commencement  
 of this Act so long as the registration thereof is not avoided by  
 non-renewal or otherwise.

The expression "bill of sale," and other expressions in this  
 Act, have the same meaning as in the principal Act, except as  
 to bills of sale or other documents mentioned in section four of  
 the principal Act, which may be given otherwise than by way  
 of security for the payment of money, to which last-mentioned  
 bills of sale and other documents this Act shall not apply.

**Bill of sale** 4. Every bill of sale shall have annexed thereto or written  
**to have** thereon a schedule containing an inventory of the personal  
**schedule of** chattels comprised in the bill of sale; and such bill of sale,  
**property** save as hereinafter mentioned, shall have effect only in respect  
**attached** of the personal chattels specifically described in the said  
**thereto.** schedule; and shall be void, except as against the grantor, in  
 respect of any personal chattels not so specifically described.

**Bill of sale** 5. Save as hereinafter mentioned, a bill of sale shall be void,  
**not to** except as against the grantor, in respect of any personal chattels  
**affect after-** specifically described in the schedule thereto of which the  
**acquired** grantor was not the true owner at the time of the execution of  
**property.** the bill of sale.

**Exception** 6. Nothing contained in the foregoing sections of this Act  
**as to cer-** shall render a bill of sale void in respect of any of the following  
**tain things.** things; (that is to say),

- (1.) Any growing crops separately assigned or charged  
 where such crops were actually growing at the time  
 when the bill of sale was executed.
- (2.) Any fixtures separately assigned or charged, and any  
 plant, or trade machinery, where such fixtures, plant, or  
 trade machinery are used in, attached to, or brought  
 upon any land, farm, factory, workshop, shop, house,  
 warehouse, or other place in substitution for any of the  
 like fixtures, plant, or trade machinery specifically  
 described in the schedule to such bill of sale.

7. Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes :—

Act, 1882,  
ss. 7—10.

- (1.) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security ;
- (2.) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes ;
- (3.) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises ;
- (4.) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes ;
- (5.) If execution shall have been levied against the goods of the grantor under any judgment at law :

Bill of sale with power to seize, except in certain events to be void,

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, or to a judge thereof in chambers, and such court or judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

8. Every bill of sale shall be duly attested, and shall be registered under the principal Act within seven clear days after the execution thereof, or if it is executed in any place out of England then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof ; and shall truly set forth the consideration for which it was given ; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein.

Bill of sale to be void unless attested and registered.

9. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed.

Form of bill of sale.

10. The execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section ten of the principal Act as requires that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed.

Attestation.

**Act, 1892, ss. 11—16.** 11. Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same or of the person against whom the process is issued to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars to each such registrar.

**Local registration of contents of bills of sale.**

**32 & 33 Vict. c. 71, s. 60.**

Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

**Bill of sale under £30 to be void.**

12. Every bill of sale made or given in consideration of any sum under thirty pounds shall be void.

**Chattels not to be removed or sold.**

13. All personal chattels seized or of which possession is taken after the commencement of this Act, under or by virtue of any bill of sale (whether registered before or after the commencement of this Act), shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

**Bill of sale not to protect chattels against poor and parochial rates.**

14. A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor and other parochial rates.

**Repeal of part of Bills of Sale Act, 1878.**

15. The eighth and the twentieth sections of the principal Act, and also all other enactments contained in the principal Act which are inconsistent with this Act are repealed, but this repeal shall not affect the validity of anything done or suffered under the principal Act before the commencement of this Act.

**Inspection of registered bills of sale.**

16. So much of the sixteenth section of the principal Act as enacts that any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected is hereby repealed, and from and after the commencement of this Act any person shall be entitled at all reasonable times to search the register, on payment of a fee of



one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

Act, 1882,  
ss. 16—18.

17. Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company.

Debentures  
to which  
Act not to  
apply.

18. This Act shall not extend to Scotland or Ireland.

Extent of  
Act.

## SCHEDULE.

## Schedule.

### *Form of Bill of Sale.*

THIS INDENTURE made the            day of           , between A.B. of            of the one part, and C.D. of            of the other part, witnesseth that in consideration of the sum of £            now paid to A.B. by C.D., the receipt of which the said A.B. hereby acknowledges [or whatever else the consideration may be], he the said A.B. doth hereby assign unto C.D., his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £           , and interest thereon at the rate of            per cent. per annum [or whatever else may be the rate]. And the said A.B. doth further agree and declare that he will duly pay to the said C.D. the principal sum aforesaid, together with the interest then due, by equal payments of £            on the            day of            [or whatever else may be the stipulated times or time of payment]. And the said A.B. doth also agree with the said C.D. that he will [here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security].

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said C.D. for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.

Signed and sealed by the said A.B. in the presence of me  
E.F. [add witness's name, address, and description].

## INTERPLEADER ACT.

**Inter-  
pleader  
Act, 1831.**

1 & 2 WILL. IV. c. 58.

*An Act to enable Courts of Law to give relief against adverse claims made upon persons having no interest in the subject of such claims.*  
[20th October, 1831.]

Upon application by a defendant in an action of assumpsit, &c., stating that the right in the subject matter is in a third party, the Court may order such third party to appear and maintain or relinquish his claim, and in the meantime stay proceedings in such action.

WHEREAS it often happens that a person sued at law for the recovery of money or goods wherein he has no interest, and which are also claimed of him by some third party, has no means of relieving himself from such adverse claims but by a suit in equity against the plaintiff and such third party, usually called a Bill of Interpleader, which is attended with expense and delay; for remedy thereof be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That upon application made by or on the behalf of any defendant sued in any of His Majesty's Courts of Law at Westminster, or in the Court of Common Pleas of the County Palatine of Lancaster, or the Court of Pleas of the County Palatine of Durham, in any action of assumpsit, debt, detinue, or trover, such application being made after declaration, and before plea, by affidavit or otherwise, showing that such defendant does not claim any interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into court or to pay or dispose of the subject matter of the action in such manner as the court (or any judge thereof) may order or direct, it shall be lawful for the court, or any judge thereof, to make rules and orders calling upon such third party to appear and to state the nature and particulars of his claim, and maintain or relinquish his claim, and upon such rule or order to hear the allegations as well of such third party as of the plaintiff, and in the meantime to stay the proceedings in such action, and finally to order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues, and also to direct which of the parties shall be plaintiff or defendant on such trial, or, with the consent of the plaintiff and such third party, their counsel or attornies, to dispose of the merits of their claims and determine the same in a summary manner, and to make such other rules and orders therein as to costs and all other matters as may appear to be just and reasonable.

**Judgment  
and de-**

2. And be it further enacted, that the judgment in any such action or issue as may be directed by the court or judge, and

the decision of the court or judge in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them. **Interpleader Act, 1831.**

3. And be it further enacted, that if such third party shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the court or judge to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators; saving nevertheless the right or claim of such third party against the plaintiff; and thereupon to make such order between such defendant and the plaintiff, as to costs and other matters, as may appear just and reasonable. **cision to be final.**  
**If such third party shall not appear, &c. the Court may bar his claim against the original defendant.**

4. Provided always, and be it further enacted, that no order shall be made in pursuance of this Act by a single judge of the Court of Pleas of the said County Palatine of *Durham* who shall not also be a judge of one of the said courts at *Westminster*, and that every order to be made in pursuance of this Act by a single judge not sitting in open court shall be liable to be rescinded or altered by the court in like manner as other orders made by a single judge. **Proviso as to orders made by a single judge.**

5. Provided also, and be it further enacted, that if upon application to a judge, in the first instance or in any later stage of the proceedings, he shall think the matter more fit for the decision of the court, it shall be lawful for him to refer the matter to the court; and thereupon the court shall hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of court, instead of the order of a judge. **If a judge thinks the matter more fit for the decision of the Court, he may refer it.**

6. And whereas difficulties sometimes arise in the execution of process against goods and chattels, issued by or under the authority of the said courts, by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process has issued, whereby sheriffs and other officers are exposed to the hazard and expense of actions; and it is reasonable to afford relief and protection in such cases to such sheriffs and other officers; be it therefore further enacted, that when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process, or to the proceeds or value thereof, it shall and may be lawful to and for the court from which such process issued, upon application of such sheriff or other officer made before or after the return of such process, and as well before as after any action brought against such sheriff or other officer, to call before them, by rule of court, as well the party issuing such process as the **For relief of sheriffs and other officers in execution of process against goods and chattels.**

**Interpleader Act, 1831.** party making such claim, and thereupon to exercise, for the adjustment of such claims and the relief and protection of the sheriff or other officer, all or any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case; and the costs of all such proceedings shall be in the discretion of the court.

**Rules, orders, &c., made in pursuance of this Act may be entered of record, and made evidence.** 7. And be it further enacted, that all rules, orders, matters, and decisions to be made and done in pursuance of this Act, except only the affidavits to be filed, may, together with the declaration in the cause (if any), be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment, except only as to becoming a charge on any lands, tenements, or hereditaments; and in case any costs shall not be paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same, his agent or attorney, execution may issue for the same by fieri facias or capias ad satisfaciendum, adapted to the case, together with the costs of such entry, and of the execution if by fieri facias; and such writ and writs may bear teste on the day of issuing the same, whether in term or vacation; and the sheriff or other officer executing any such writ shall be entitled to the same fees, and no more, as upon any similar writ grounded upon a judgment of the court.

**Costs.**

**Writs.**

**Sheriffs' fees.**

**Upon any application under 1 W. 4, c. 21, and this Act, the Court may exercise such powers and make such rules as are given by or mentioned in this Act.** 8. And whereas by a certain Act made and passed in the last session of Parliament, intituled *An Act to improve the Proceedings in Prohibition and on Writs of Mandamus*, it was among other things enacted, that it should be lawful for the court to which application may be made for any such writ of mandamus as is therein in that behalf mentioned to make rules and orders calling not only upon the person to whom such writ may be required to issue, but also all and every other person having or claiming any right or interest in or to the matter of such writ, to show cause against the issuing of such writ and payment of the costs of the application, and upon the appearance of such other person in compliance with such rules, or in default of appearance after service thereof, to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as were or might be given or mentioned by or in any Act passed or to be passed during that present session of Parliament for giving relief against adverse claims made upon persons having no interest in the subject of such claims: And whereas no such Act was passed during the then present session of Parliament; be it therefore enacted, That upon any such application as is in the said Act and herein-

before mentioned, it shall be lawful for the court to exercise all such powers and authorities, and make all such rules and orders applicable to the case, as are given or mentioned by or in this present Act. Interpleader Act, 1831.

1 &amp; 2 VICT. c. 45.

Act, 1837,  
s. 2.

*An Act (inter alia) to extend the jurisdiction of the Judges of the Superior Courts of Common Law.*

2. "WHEREAS by another Act passed in the second year of the reign of His late Majesty King William IV., intituled, 'An Act to enable the courts of law to give relief against adverse claims made upon persons having no interest in the subject of such claims,' provision is made for the relief of sheriffs and other officers concerned in the execution of process issued out of any of His Majesty's Courts of Law at Westminster, or of the Court of Common Pleas of the County Palatine of Lancaster, or the Court of Pleas of the County Palatine of Durham, against goods and chattels by reason of claims made to such goods and chattels, but such relief can only be given by rule of court, and whereas it is expedient that a single judge should possess the power of giving relief in that respect; be it further enacted, that it shall be lawful for any judge of the said Courts of Queen's Bench, Common Pleas, or Exchequer, with respect to any such process issued out of any of those courts, or for any judge of the said Court of Common Pleas of the County Palatine of Lancaster, or Court of Pleas of the County Palatine of Durham (being also a judge of one of the said three Superior Courts) with respect to process issued out of the said Courts of Lancaster and Durham respectively, to exercise such powers and authorities for the relief and protection of the sheriff or other officer as may by virtue of the said last-mentioned Act be exercised by the said several courts respectively, and to make such order therein as shall appear to be just; and the costs of such proceedings shall be in the discretion of such judge."

## COMMON LAW PROCEDURE ACT, 1860.

23 &amp; 24 VICT. c. 126.

C. L. P.  
Act,  
1860, s. 12.

12. "WHERE an action has been commenced in respect of a common law claim for the recovery of money or goods, or where goods or chattels have been taken or are intended to be Interpleader Act, 1831.

C. L. P.  
Act, 1860,  
ss. 12—16.

granted  
though  
titles have  
not a  
common  
origin.  
1 & 2  
Will. 4,  
c. 58.

taken in execution under process issued from any one of the Superior Courts, or from the Court of Common Pleas at Lancaster or the Court of Pleas at Durham, and the defendant in such action or the sheriff or other officer, has applied for relief under the provisions of an Act made and passed in the session of Parliament held in the first and second year of the reign of His late Majesty King William the Fourth, intituled, 'An Act to enable the courts of law to give relief against adverse claims made upon persons having no interest in the subject of such claims,' it shall be lawful for the court or a judge to whom such application is made to exercise all the powers and authorities given to them by this Act and the hereinbefore mentioned Act passed in the session of Parliament held in the first and second years of the reign of His late Majesty King William the Fourth, though the titles of the claimants to the money, goods, or chattels, in question, or to the proceeds or value thereof, have not a common origin, but are adverse to and independent of one another."

Court or  
judge may  
direct sale  
of goods  
seized in  
execution.

13. "When goods or chattels have been seized in execution by a sheriff or other officer under process of the above-mentioned courts and some third person claims to be entitled, under a bill of sale or otherwise, to such goods or chattels by way of security for debt, the court or a judge may order a sale of the whole or part thereof upon such terms as to payment of the whole or part of the secured debt or otherwise as they or he shall think fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to such court or judge may seem just."

Power to  
court or  
judge to  
decide  
summarily  
in certain  
cases.

14. "Upon the hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims, it shall be lawful for the court or judge wherever, from the smallness of the amount in dispute, or of the value of the goods seized, it shall appear to them or him desirable and right so to do, at the request of either party to dispose of the merits of the respective claims of such parties, and to determine the same in a summary manner upon such terms as they or he shall think fit to impose, and to make such other rules and orders therein as to costs and all other matters as may be just."

Special case  
may be  
stated  
where facts  
undisputed.

15. "In all cases of interpleader proceedings, where the question is one of law and the facts are not in dispute, the judge shall be at liberty, at his discretion, to decide the question without directing an action or issue and, if he shall think it desirable, to order that a special case be stated for the opinion of the court."

Proceedings on  
special case  
in court  
below and  
in error.

16. "The proceedings upon such case shall, as nearly as may be, be the same as upon a special case stated under the 'Common Law Procedure Act, 1852,' and error may be brought upon a judgment upon such case; and the provisions of the

'Common Law Procedure Act, 1854,' as to bringing error upon a special case, shall apply to the proceedings in error upon a special case under this Act." **C. L. P. Act, 1860, ss. 16—18.**

17. "The judgment in any such action or issue as may be directed by the court or judge in any interpleader proceedings, and the decision of the court or judge in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them." **Judgment and decision when to be final.**

18. "All rules, orders, matters and decisions to be made and done in interpleader proceedings under this Act (excepting only any affidavits), may, together with the declaration in the cause, if any, be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment in the Superior Courts of Common Law." **Rules, orders, &c., made into interpleader proceedings may be entered of record and made evidence.**

## STAMP DUTIES ON BILLS OF SALE.

**Stamp Duties.**

Absolute bills of sale must be stamped according to the following table :—

A conveyance or transfer on the sale of any property (except stock of the Bank of England and the East India Company, or the debenture stock or funded debt of any company or corporation) is liable to stamp duty as follows :—

|                                                                                       |             | £ | s. | d. |
|---------------------------------------------------------------------------------------|-------------|---|----|----|
| When the amount or value of the consideration for the sale does not exceed £5 . . .   |             | 0 | 0  | 6  |
| Exceeds £5 and does not exceed £10 . . .                                              |             | 0 | 1  | 0  |
| " 10                                                                                  | " 15 . . .  | 0 | 1  | 6  |
| " 15                                                                                  | " 20 . . .  | 0 | 2  | 0  |
| " 20                                                                                  | " 25 . . .  | 0 | 2  | 6  |
| " 25                                                                                  | " 50 . . .  | 0 | 5  | 0  |
| " 50                                                                                  | " 75 . . .  | 0 | 7  | 6  |
| " 75                                                                                  | " 100 . . . | 0 | 10 | 0  |
| " 100                                                                                 | " 125 . . . | 0 | 12 | 6  |
| " 125                                                                                 | " 150 . . . | 0 | 15 | 0  |
| " 150                                                                                 | " 175 . . . | 0 | 17 | 6  |
| " 175                                                                                 | " 200 . . . | 1 | 0  | 0  |
| " 200                                                                                 | " 225 . . . | 1 | 2  | 6  |
| " 225                                                                                 | " 250 . . . | 1 | 5  | 0  |
| " 250                                                                                 | " 275 . . . | 1 | 7  | 6  |
| " 275                                                                                 | " 300 . . . | 1 | 10 | 0  |
| " 300                                                                                 | " . . .     |   |    |    |
| For every £50, and also for any fractional part of £50, of such amount or value . . . |             | 0 | 5  | 0  |

**Stamp  
Duties.**

Bills of sale given by way of security for the payment of money must be stamped as mortgages.

Mortgage, bond, debenture, covenant, warrant of attorney to confess and enter up judgment, and foreign security of any kind.

|                                                                                                                                                                                                                                                            | £ | s. | d. |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|----|
| (1.) Being the only or principal or primary security for the payment or repayment of money not exceeding £25 . . . . .                                                                                                                                     | 0 | 0  | 8  |
| Exceeding £25 and not exceeding £50 . . . . .                                                                                                                                                                                                              | 0 | 1  | 3  |
| "      50      "      "      100 . . . . .                                                                                                                                                                                                                 | 0 | 2  | 6  |
| "      100     "      "      150 . . . . .                                                                                                                                                                                                                 | 0 | 3  | 9  |
| "      150     "      "      200 . . . . .                                                                                                                                                                                                                 | 0 | 5  | 0  |
| "      200     "      "      250 . . . . .                                                                                                                                                                                                                 | 0 | 6  | 3  |
| "      250     "      "      300 . . . . .                                                                                                                                                                                                                 | 0 | 7  | 6  |
| "      300     "      "      "      " . . . . .                                                                                                                                                                                                            |   |    |    |
| For every £100, and also for any fractional part of £100, of such amount . . . . .                                                                                                                                                                         | 0 | 2  | 6  |
| (2.) Being a collateral, or auxiliary, or additional, or substituted security, or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped :                                                    |   |    |    |
| For every £100, and also for any fractional part of £100, of the amount secured . . . . .                                                                                                                                                                  | 0 | 0  | 6  |
| (3.) Transfer, assignment, disposition, or assignation, of any mortgage, bond, debenture, covenant, or foreign security, or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment : |   |    |    |
| For every £100, and also for any fractional part of £100, of the amount transferred, assigned, or disposed . . . . .                                                                                                                                       | 0 | 0  | 6  |

## EXTRACTS FROM THE RULES OF THE SUPREME COURT, APRIL, 1880.

### RULES.

- B. S. C.** 1. *Mode of citing.*—These rules may be cited as "The  
1880, Rules of the Supreme Court, April, 1880," or each separate  
Rule 1. rule may be cited as if it had been one of the rules of the  
Supreme Court, and had been numbered by the number of  
the order and rule mentioned in the margin,



2. *Commencement.*—These rules shall come into operation on the sixth day of April, 1880.

E. S. C.  
1880,  
Order  
**XXXVII.**  
rr. 2—17.

ORDER XXXVII.

*Evidence generally.*

12. *Form of affidavits.*—Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule. [Order XXXVII., r. 3a.]

13. *Description and address of deponent to be stated.*—Every affidavit shall state the description and true place of abode of the deponent. [Order XXXVII., r. 3b.]

14. *Affidavits made by two or more deponents.*—In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the “above-named” deponents. [Order XXXVII., r. 3c.]

15. *Affidavit to be filed.*—Every affidavit shall be filed in the central office. There shall be appended to every affidavit a note showing on whose behalf it is filed. [Order XXXVII., r. 3d.]

16. *Alterations in affidavits.*—No affidavit having in the jurat or body thereof any interlineations, alteration, or erasure shall, without leave of the court or a judge, be read or made use of in any matter depending in court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or, if taken at the central office, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it. [Order XXXVII., r. 3e.]

17. *Affidavits by illiterate persons.*—Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his or her signature in the presence of the officer. No such affidavit shall be used in evidence in the

**E. S. C.** absence of this certificate, unless the court or a judge is otherwise satisfied that the affidavit was read over to and apparently  
**1880,** perfectly understood by the deponent. [Order XXXVII., r. 3f.]  
**Orders**  
**XXXVII.**

**LIV.** 18. *Stamping of affidavits and use of office copies.*—In cases  
**rr. 17—37.** in which by the present practice an original affidavit is allowed to be used, it shall, before it is used, be stamped with a proper filing stamp, and shall, at the time when it is used, be delivered to and left with the proper officer in court or in chambers, who shall send it to the central office. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed in the Central Office, and the copy duly authenticated with the seal of that office. [Order XXXVII., r. 3g.]

## ORDER LIV.

### *Applications at Chambers.*

33. *Procedure in chambers.*—The following rules numbered 34 to 40, both inclusive, shall apply to all applications at chambers in the Queen's Bench, Common Pleas, and Exchequer Divisions. [Order LIV., r. 7.]

34. *Forms of summons.*—A summons shall be in the form H. 1 in the schedule hereto, with such variations as circumstances require. It shall be addressed to all the persons on whom it is to be served. [Order LIV., r. 8.]

35. *Preparation and issue of summons.*—A summons shall be prepared by the applicant or his solicitor, and shall be sealed in the central office, and when so sealed shall be deemed to be issued. The person obtaining a summons shall leave a copy thereof at the central office. [Order LIV., r. 9.]

36. *Hours of returns.*—Unless a judge otherwise specially directs, summonses for time only shall be returnable at 10.30 in the forenoon, and be heard by the masters in priority to other business. Unless, as aforesaid, other summonses shall be returnable at successive hours, commencing at eleven in the forenoon, and summonses to be attended by counsel shall not be returnable before two in the afternoon. In settling the number of summonses returnable at each hour, regard shall be had to the nature of the several applications. [Order LIV., r. 10.]

37. *List of summonses.*—Each summons, not being a summons for time only, shall, when issued, be entered by the proper officer in a list. The lists of summonses shall distinguish those which a master has jurisdiction to hear from those which a master has not jurisdiction to hear, and those which are to be attended by counsel from those which are not to be so attended. [Order LIV., r. 11.]

38. *Hearing of summonses.*—The summonses in each list for hearing by a judge or master shall be called on in their order. If when a summons is called on, neither party appears, the summons shall be passed over until the list for the hour has been gone through. The summonses passed over shall then be called on a second time in their order. If neither party appears to a summons so called on, it shall be struck out. If one party only appears, such order as seems just may, on an affidavit of service, be made *ex parte*. An affidavit of non-attendance shall not be required or allowed. [Order LIV., r. 12.]

R. S. C.  
1880,  
Orders  
LIV.—  
LVII.  
rr. 38—43.

39. *Form of order.*—An order shall be in the form H. 2 in the schedule hereto, with such variations as circumstances require. It shall be sealed, and shall be marked with the name of the judge or master by whom it is made. [Order LIV., r. 13.]

40. *Filing consents to orders and adjournments.*—Written consents to orders and adjournments shall be filed at the central office. [Order LIV., r. 14.]

#### ORDER LV.

##### *Costs.*

41. *Security for costs where given by bond.*—Where a bond is to be given as security for costs, it shall, unless the court or a judge otherwise directs, be given to the party or person requiring the security, and not to an officer of the court. [Order LV., r. 3.]

#### ORDER LVII.

##### *Time.*

42. *Enlargement of time by consent.*—The time for delivering or amending any pleading may be enlarged by consent in writing, without application to the court or a judge. [Order LVII., r. 6a.]

43. *Service.*—Service of pleadings, notices, summonses, orders, rules, and other proceedings shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any weekday except Saturday shall be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall be deemed to have been effected on the following Monday. [Order LVII., r. 8.]

**R. S. C.  
1880,  
Orders  
LIX.,  
LXA.,  
Rules  
44—48.**

## ORDER LIX.

### *Effect of Non-compliance and Amendment.*

44. *Amendment.*—The court or a judge may at any time, and on such terms as to costs or otherwise as to the court or judge may seem just, amend any defect or error in any proceedings; and all such amendments may be made as may be necessary for the purpose of determining the real question or issue raised by or depending on the proceedings. [Order LIX., r. 2.]

## ORDER LXA.

### *Central Office.*

45. *Seals of central office.*—The official seals to be used in the central office shall be such as the Lord Chancellor from time to time directs. [Order LXA., r. 5.]

All copies, certificates, and other documents appearing to be sealed with a seal of the central office shall be presumed to be office copies or certificates or other documents issued from the central office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the central office, shall be required for the authentication of any such copy, certificate, or other document.

46. *Enrolment of deeds.*—All deeds which by any statute or statutory rule are directed or permitted to be enrolled in any of the courts whose jurisdiction has been transferred to the High Court of Justice may be enrolled in the enrolment department of the central office. [Order LXA., r. 6.]

47. *Judgments, &c., not to be registered after 2 p.m.*—The registrar of judgments shall not receive any memorandum of a judgment, execution, *lis pendens*, order, rule, annuity, Crown debt, or other incumbrance, or any memorandum of satisfaction relating to the same, for registration, after the hour of two in the afternoon. [Order LXA., r. 7.]

48. *Searches and certificates of search.\**—The clerk of enrolments and each of the following registrars, namely—

The registrar of bills of sale,

The registrar of certificates of acknowledgments of deeds by married women, and

The registrar of judgments,

shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search. [Order LXA., r. 8.]

\* Rule as amended in May, 1880.

49. *Registrars under Bills of Sale Act.*—The masters shall be the registrar for the purposes of the Bills of Sale Act, 1878, and any one of the masters may perform all or any of the duties of the registrar. [Order LXa., r. 9.]

R. S. C.  
1880,  
Orders  
LXa.,  
LXI.,  
Rules  
49—53.

50. *Memorandum of satisfaction of bill of sale.*—A memorandum of satisfaction may be ordered to be written upon a registered copy of a bill of sale on a consent to the satisfaction, signed by the person entitled to the benefit of the bill of sale, and verified by affidavit, being produced to the registrar, and filed in the central office.

Where this consent cannot be obtained the registrar may, on application by summons, and on hearing the person entitled to the benefit of the bill of sale, or on affidavit of service of the summons on that person, and in either case on proof to the satisfaction of the registrar that the debt (if any) for which the bill of sale was made has been satisfied or discharged, order a memorandum of satisfaction to be written upon a registered copy thereof. [Order LXa., r. 10.]

51. *Restrictions on removal of documents from central office.*—No affidavit or record of the court shall be taken out of the central office without the order of a judge or master, and no subpoena for the production of any such document shall be issued. [Order LXa., r. 11.]

52. *Forms.*—Such variations shall be made in the form prescribed by or under the Supreme Court of Judicature Acts, 1873, 1875, and 1877, as are requisite for giving effect to these rules.

The additional forms contained in the schedule hereto shall be used in or for the purposes of the central office, with such variations as circumstances require.

The masters may from time to time prescribe the use in or for the purpose of the central office of such modified or additional forms as may be deemed expedient. [Order LXa., r. 12.]

## ORDER LXI.

### *Sittings and Vacations.*

53. *Office hours.*—The office hours in the several offices of the Supreme Court, other than the Summons and Order, Crown Office, and Associate Departments of the Central Office, shall be from ten in the forenoon to four in the afternoon, except on Saturday and in vacation, when the offices shall close at two in the afternoon. In the excepted departments the hours shall be from eleven in the forenoon to five in the afternoon, except on Saturday and in vacation, when the hours shall be from eleven in the forenoon to three in the afternoon. [Order LXI., r. 4c.]

**R. S. C.,  
1880,  
Order  
LXIII.,  
Rules  
60—65.**

### ORDER LXIII.

#### *Interpretation of terms.*

60. *Interpretation of terms.*—In these rules the expression “Central Office” means the central office of the Supreme Court of Judicature; and the expression “Master” means a Master of the Supreme Court of Judicature. [Order LXIII., r. 2.]

In the Supreme Court of Judicature (Officers) Act, 1879, and in Order LX., the expression “Officer of the Supreme Court” shall mean any officer paid wholly or partly out of public money who is attached to the Supreme Court, the High Court of Justice, or the Court of Appeal, or to any judge of any of those courts, and is not an officer attached to the person of a judge, and removable by him at pleasure.

The term “these rules” as used in the rules of the Supreme Court shall include any rules made in amendment of or addition to those rules.

#### *Rules of the Supreme Court.*

##### *(Costs.)*

64. *Special case.*—Order IV. of the additional rules of the Supreme Court (Costs) is hereby annulled. [Order IVa.]

65. *Extension of time.*—Rule 22 in the schedule to the additional rules of the Supreme Court (Costs) is hereby annulled.

The costs of an application to extend the time for taking any proceeding shall, in the absence of an order by the court or a judge directing by whom they are to be paid, be in the discretion of the taxing master. [Rule 22a.]

**Affidavits,  
Form  
B. 25.**

### AFFIDAVITS.

#### **B. 25.**

#### **AFFIDAVIT ON REGISTRATION OF BILL OF SALE.**

In the High Court of Justice.

Division.

18 .

No.

I                      of                      make oath and say as follows:—

1. The paper writing hereto annexed and marked A is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation

# AFFIDAVITS.

99

of the execution thereof, as made and given and executed by **Affidavits, Forms B. 25, 25a.**

2. The said bill of sale was made and given by the said on the day of 18 .

3. I was present and saw the said duly execute the said bill of sale on the said day of 18 .

4. The said resides at [*state residence at time of swearing affidavit*] and is [*state occupation*].

5. The name subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in the proper handwriting of me this deponent.

6. I am a solicitor of the Supreme Court, and reside at

7. Before the execution of the said bill of sale by the said I fully explained to the nature and effect thereof.

Sworn at the day of 18 . }

Before me,

This affidavit is filed on behalf of .

B. 25a.

## AFFIDAVIT OF RE-REGISTRATION OF A BILL OF SALE.

In the High Court of Justice.  
Queen's Bench Division.

I, of do swear that a bill of sale, bearing date the day of 18 , and made between [*insert the names and description of the parties in the original bill of sale*] of the one part and of the other part, and a copy of which said bill of sale was registered on the day of 18 , is still a subsisting security.

Sworn at this day of 18 . }

Before me,

**Affidavits,  
Forms**

**B. 25b.—**

**B. 27.**

**B. 25b.**

**AFFIDAVIT OF EXECUTION OF BILL OF SALE WITH TWO  
ATTESTING WITNESSES, ONE NOT BEING A SOLICITOR.**

In the High Court of Justice.  
Queen's Bench Division.

I,                      of                      , make oath and say as follows :—

1. That the paper writing hereunto annexed marked is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof, and that the said bill of sale was made and given on the day it bears date, being the day of                      one thousand eight hundred and                      .

2. That I was present and did see                      in the said bill of sale mentioned, and whose name is signed thereto, duly sign and execute the same on the                      day of                      in the year aforesaid, and that the said                      resides at                      and is a                      .

3. That the said bill of sale was duly attested, and                      , the attesting solicitor, did before its execution by the said                      explain to him the effect thereof.

4. That the names                      and                      set and subscribed as the witnesses attesting the due execution of the said bill of sale are respectively of the proper handwriting of me this deponent and of the said                      , and that I reside at                      , and am a                      , and that the said                      resides at                      , and is a solicitor of the Supreme Court of Judicature, and that the said                      and me this deponent are the only attesting witnesses to the said bill of sale.

Sworn at                      this                      day }  
of                      18                      . }

Before me,                      .

**B. 27.**

**AFFIDAVIT ON INTERPLEADER.**

In the High Court of Justice.

Division.                      18                      .

No.                      .

Between                      .

and

Plaintiff,

Defendant.

I,                      of                      , the defendant in the above action, make oath and say as follows :—

1. The writ of summons herein was issued on the                      day of                      18                      , and was served on me on the                      day of                      18                      . I have not yet delivered a statement of defence herein.



# SUMMONSES AND ORDERS.

101

2. The action is brought to recover . The said Affidavits, ["is" or "are"] in my possession, but I claim no interest therein. **Forms B. 27.**

3. The right to the said subject-matter of this action has been and is claimed [if claim in writing make the writing an exhibit] by one who [state expectation of suit, or that he has already sued].

4. I do not in any manner collude with the said or with the above-named plaintiff, but I am ready to bring into court or to pay or dispose of the said in such manner as the court may order or direct.

Sworn at the day of 18 . }

Before me,

This affidavit is filed on behalf of the .

# SUMMONSES AND ORDERS.

**Sum-  
monses  
and  
Orders,  
Form H. 1.**

H. I.

SUMMONS (GENERAL FORM).

In the High Court of Justice.  
Division.

18 . No.

Between

Plaintiff,

and

Defendant.

Let all parties concerned attend the Judge [or Master] in Chambers on day the day of 18 , at o'clock in the noon, on the hearing of an application on the part of

Dated the day of 18 .

This summons was taken out by of solicitor for

To

Sum-  
monses  
and  
Orders,  
Forms  
H. 2—H.  
49.

H. 2.

## ORDER (GENERAL FORM).

In the High Court of Justice.

Division.

18 . No.

Judge [*or Master (insert name of Judge or Master)*] in  
Chambers.

Between

Plaintiff,

and

Defendant.

Upon hearing  
of filed the

and upon reading the affidavit  
day of 18 , and

It is ordered  
tion be

and that the costs of this applica-

Dated the

day of

18 .

H. 48.

## INTERPLEADER ORDER, No. 1.

In the High Court of Justice.

Division

18 . No.

Master in Chambers.

Between

Plaintiff,

and

Defendant.

and between

Claimant,

and

Respondent.

Upon hearing  
of filed the

and upon reading the affidavit  
day of 18 , and

It is ordered that the claimant be barred, that no action be  
brought against the above-named [*sheriff*] , and  
that the costs of this application be

Dated the

day of

18 .

H. 49.

## INTERPLEADER ORDER, No. 2.

In the High Court of Justice.

Division.

18 . No. .

Master in Chambers.

Between

Plaintiff,

and

Defendant,

and

Claimant.

Upon hearing

and upon reading the affidavit

of                      filed the                      day of                      18 ,      **Sum-**  
and                      .                      .                      .                      **monses**  
It is ordered that the above-named claimant be substituted      **and**  
as defendant in this action in lieu of the present defendant,      **Orders,**  
and that the costs of this application be                      .      **Forms**  
Dated the                      day of                      18 .      **H. 49, 50.**

H. 50.

INTERPLEADER ORDER, No. 3.

In the High Court of Justice.

Division.

18 . No. .

Master in Chambers.

Between                      Plaintiff,

and

Defendant,

and between

Claimant,

and the said  
the sheriff of

execution creditor, and

Respondents.

Upon hearing                      and upon reading the affidavit  
of                      filed the                      day of                      18 , and

It is ordered that the said sheriff proceed to sell the goods  
seized by him under the writ of *feri facias* issued herein, and  
pay the net proceeds of the sale, after deducting the expenses  
thereof, into court in this cause, to abide further order herein.

And it is further ordered that the parties proceed to the  
trial of an issue in the High Court of Justice, in which the  
said claimant shall be the plaintiff and the said execution  
creditor shall be the defendant, and that the question to be  
tried shall be whether at the time of the seizure by the sheriff  
the goods seized were the property of the claimant as against  
the execution creditor.

And it is further ordered that this issue be prepared and  
delivered by the plaintiff therein within                      from this  
date, and be returned by the defendant therein within  
days, and be tried at                      .

And it is further ordered that the question of costs and all  
further questions be reserved until after the trial of the said  
issue, and that no action shall be brought against the said  
sheriff for the seizure of the said goods.

Dated the                      day of                      18 .

**Sum-  
monses  
and  
Orders,  
Form  
H. 51.**

H. 51.

INTERPLEADER ORDER, No. 4.

**In the High Court of Justice.  
Division.**

18 . No. .

**Master in Chambers.**

Between Plaintiff,  
and Defendant,  
and between Claimant,  
creditor, and Respondents.

Upon hearing \_\_\_\_\_ and upon reading the affidavit of  
filed the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, and \_\_\_\_\_.

It is ordered that upon payment of the sum of £ into court by the said claimant within from this date, or upon his giving within the same time security to the satisfaction of one of the masters of the Supreme Court for the payment of the same amount by the said claimant according to the directions of any order to be made therein, and upon payment to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of *fiery facias* herein.

And it is further ordered that, unless such payment be made or security given within the time aforesaid, the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into court in the cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the claimant shall be plaintiff and the execution creditor shall be defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within \_\_\_\_\_ from this date, and be returned by the defendant therein within \_\_\_\_\_ days, and be tried at \_\_\_\_\_.

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the sheriff for the seizure of the said goods.

Dated the       day of       , 18   .

H. 52.

INTERPLEADER ORDER, No. 5.

Sum-  
monses  
and  
Orders,  
Form  
H. 52.

In the High Court of Justice.

Division.

18 . No. .

Master in Chambers.

Between                      Plaintiff,  
                                         and  
                                         Defendant,  
and between                      Claimant.

and the said                      execution creditor, and  
the sheriff of                      Respondents.

Upon hearing                      and upon reading the affidavit of  
                                         , filed the                      day                      , 18                      , and                      .

It is ordered that, upon payment of the sum of £                      into court by the said claimant, or upon his giving security to the satisfaction of one of the masters of the Supreme Court for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of *feri facias* issued herein.

And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into court in the cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the High Court of Justice, in which the claimant shall be plaintiff and the execution creditor shall be defendant, and that the question to be tried shall be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within                      from this date, and be returned by the defendant therein within                      days, and be tried at

And it is further ordered that the question of costs and all further questions be reserved until after the trial of the said issue, and that no action shall be brought against the sheriff for the seizure of the said goods.

Dated the                      day of                      18 .

Sum-  
mons  
and  
Orders,  
Forms  
H. 53, 54.

H. 53.

## INTERPLEADER ORDER, No. 6.

In the High Court of Justice.

Division.

18 . No. .

Master in Chambers.

Between

Plaintiff,

and

Defendant,

and between

Claimant.

and the said  
the sheriff of

execution creditor, and

Respondents.

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing and upon reading the affidavit of

filed the day of 18 , and

It is ordered that and that the costs of this application be

Dated the day of 18 .

H. 54.

## INTERPLEADER ORDER, No. 7.

In the High Court of Justice.

Division.

18 . No. .

Master in Chambers.

Between

Plaintiff,

and

Defendant,

and between

Claimant,

and the said  
the sheriff of

execution creditor, and

Respondents.

Upon reading and upon hearing the affidavit of filed the day of 18 , and

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of *fiery facias* issued in this action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale (after deducting the expenses thereof, and rent, if any), the said sheriff pay to the claimant the amount of his said claim and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be

Dated the day of 18 .

H. 55.

ORDER DISMISSING SUMMONS (GENERALLY).

In the High Court of Justice.

Division.

18 . No.

Master in Chambers.

Sum-  
monses  
and  
Orders,  
Forms

H. 55, 56—  
B. 41.

Between

Plaintiff,

and

Defendant.

Upon hearing and upon reading the affidavit  
of filed the day of 18 , and

It is ordered that the application of be dismissed  
[if the dismissal is with costs add these words] with costs to be  
taxed and paid by the to the .

Dated the day of 18 .

H. 56.

SUMMONS FOR ENTRY OF SATISFACTION ON A REGISTERED  
BILL OF SALE.

In the High Court of Justice.

In the matter of a bill of sale by to  
dated the day of 18 , and registered on  
the day of 18 .

Let all parties concerned attend the Registrar of Bills of  
Sale at the Central Office, Royal Courts of Justice, London,  
on the day of 18 , at o'clock  
in the noon, on the hearing of an application on the  
part of that satisfaction be entered on the above-  
mentioned bill of sale.

Dated the day of 18 .

This summons was taken out by of ,

To

B. 41.

AFFIDAVIT AND CONSENT TO ENTER SATISFACTION ON BILL  
OF SALE.

In the High Court of Justice.

Queen's Bench Division.

I , solicitor of the Supreme Court of Judicature,  
make oath and say as follows :—

1. That the debt interest and costs for which the bill of sale

H. 47. mortgagee (or assignee), and verily believe.  
2. That the said \_\_\_\_\_ did on the \_\_\_\_\_ day of \_\_\_\_\_,  
18 \_\_\_\_\_, sign the consent hereunto annexed in my presence.

Before me,

*A Commissioner to administer Oaths in the  
Supreme Court of Judicature in England.*

I do hereby consent that a memorandum of satisfaction be written upon the registered copy of the bill of sale given for securing the sum of £ , bearing date the day of , 18 , made between and , and registered on the day of 18 , the debt for which such bill of sale was given as a security having been satisfied.

[illegible]

*Witness,*

*A Solicitor of the Supreme Court of Judicature.*

## H. 47.

### ORDER FOR ENTRY OF SATISFACTION ON BILL OF SALE.

**In the High Court of Justice.  
Division.**

In the matter of a bill of sale by \_\_\_\_\_, to \_\_\_\_\_,  
dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

Upon hearing \_\_\_\_\_, and upon reading \_\_\_\_\_.

It is ordered that satisfaction be entered on the above-mentioned bill of sale.

Dated the                      day of                      18 .



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THE END.

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